

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MELISSA KAYE,

Plaintiff,

INDEX NO.: 18-CV-12137

-against-

HEALTH AND HOSPITALS CORPORATION, et al,

Defendants.

-----X

Remote Deposition  
New York, New York 11716

November 12, 2021  
10:05 a.m.

DEPOSITION of ROSS MACDONALD, a non-party  
witness on behalf of the Defendants herein,  
taken by the Plaintiff, held at the  
above-mentioned time and place, before KIARA  
MILLER, a Notary Public of the State of New  
York.

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2     A P P E A R A N C E S:

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4                   THE LAW OFFICES OF SPECIAL HAGAN  
5                   Attorney for Plaintiff  
6                   196-04 Hollis Avenue  
7                   Saint Albans, New York 11412  
8                   EMAIL: EMAIL  
9                   BY: SPECIAL HAGAN, ESQ.

7

8                   NEW YORK CITY LAW DEPARTMENT  
9                   Attorney for Defendants  
10                  100 Church Street  
11                  New York, New York 10007  
12                  EMAIL: EMAIL  
13                  BY: DONNA CANFIELD, ESQ.

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13     ALSO PRESENT:

14     Melissa Kaye

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IT IS HEREBY STIPULATED AND AGREED by and

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between the attorneys for the respective

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parties herein, and in Compliance with Rule 221

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of the Uniform Rules for the.

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Trial Courts:

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THAT the parties recognize the provision of

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Rule 3115 subdivisions (b), (c) and/or (d).

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All objections made at a deposition shall be

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noted by the officer before whom the deposition

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is taken and the answer shall be given and the

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deposition shall proceed subject to the

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objections and to the right of a person to

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apply for appropriate relief pursuant to

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Article 31 of the CPLR.

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THAT every objection raised during a deposition

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shall be stated succinctly and framed so as not

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to suggest an answer to the deponent and, at

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the request of the questioning attorney, shall

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include a clear statement as to any defect in

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form or other basis of error or irregularity.

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Except to the extent permitted by CPLR Rule

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3115 or by this rule, during the course of the

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examination persons in attendance shall not

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make statements or comments that interfere with

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2 the questioning.

3 THAT a deponent shall answer all questions at a

4 deposition, except (i) to preserve a privilege

5 or right of confidentiality, (ii) to enforce a

6 limitation set forth in an order of a court, or

7 (iii) when the question is plainly improper and

8 would, if answered cause significant prejudice

9 to any person. An attorney shall not direct a

10 deponent not to answer except as provided in

11 CPLR Rule 3115 or this subdivision. Any

12 refusal to answer or direction not to answer

13 shall be accompanied by a succinct and clear

14 statement of the basis therefore. If the

15 deponent does not answer a question, the

16 examining party shall have the right to

17 complete the remainder of the deposition.

18 THAT an attorney shall not interrupt the

19 deposition for the purpose of communicating

20 with the deponent unless all parties consent or

21 the communication is made for the purpose of

22 determining whether the question should not be

23 answered on the grounds set forth in Section

24 221.2 of these rules and in such event, the

25 reason for the communication shall be state for

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2 the record succinctly and clearly.

3 THAT failure to object to any question or to

4 move to strike any testimony at this

5 examination shall not be a bar or waiver to

6 make such objection or motion at the time of

7 the trial of this action, and is hereby

8 reserved; and

9 THAT this examination may be signed and sworn

10 to by the witness examined herein before any

11 Notary Public, but failure to do so or to

12 return the original of the examination to the

13 attorney on whose behalf the examination is

14 taken shall not be deemed a waiver of the

15 rights provided by Rules 3116 and 3117 of the

16 CPLR and shall be controlled thereby, and

17 THAT certification and filing of the original

18 of this examination are waived; and

19 THAT the questioning attorney shall provide

20 counsel for the witness examined herein with a

21 copy of this examination at no charge.

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1 R. MACDONALD

2 R O S S M A C D O N A L D, after having first been  
3 duly sworn by a Notary Public of the State of New  
4 York, was examined and testified as follows:

5 COURT REPORTER: Please state  
6 your name for the record.

7 THE WITNESS: Ross MacDonald.

8 COURT REPORTER: Please state  
9 your address for the record.

10 THE WITNESS: 55 Water Street,  
11 New York, New York 10041. That's  
12 Correctional Health Services on the  
13 18th Floor.

14 EXAMINATION BY

15 MS. HAGAN:

16 Q Good morning, Dr. MacDonald. My  
17 name is Special Hagan. I'm here on behalf  
18 of Dr. Kaye.

19 You're aware of why you're being  
20 deposed today, right?

21 MS. CANFIELD: Objection.

22 A Yes.

23 Q Did you review any documents prior  
24 to today's deposition?

25 A No.

1 R. MACDONALD

2 Q What did you do in preparation for  
3 today's deposition?

4 MS. CANFIELD: Objection to  
5 form. You can answer.

6 A I had a conversation or two  
7 conversations with Ms. Canfield.

8 Q When did you have those  
9 conversations?

10 A We had a brief conversation this  
11 morning. And then, I don't remember the  
12 exact date of the first one, it was probably  
13 in the week prior to the originals,  
14 originally scheduled date for this  
15 deposition.

16 Q At any point did you read  
17 Dr. Kaye's lawsuit?

18 A No.

19 Q So you've never read the complaint  
20 that she filed in federal court?

21 A No.

22 Q When did you learn that Dr. Kaye  
23 filed a lawsuit against HHC?

24 A I think I've been aware of that  
25 for several years. For quite some time,

1 R. MACDONALD

2 yeah.

3 Q At any point were you told to  
4 preserve documents?

5 A You know, as a general practice, I  
6 preserve all documents. So I don't know if  
7 I got a specific notification related to  
8 this litigation, but my work documents,  
9 emails, all that, I always preserve.

10 Q Now, do you have a mobile phone?

11 A Yes.

12 Q An HHC issued mobile phone?

13 A Yes.

14 Q What's that number?

15 A (347) 578-5607.

16 Q Do you have any like, I guess any  
17 devices, I'm not sure if iPad is still a  
18 thing now, but do you have anything like  
19 that?

20 A No. I have a work-issued laptop  
21 as well.

22 Q Okay. And what's your current  
23 email address?

24 A Rmacdonald@nychhc.org.

25 Q And how long has this been your



1 R. MACDONALD

2 email address?

3 A Since 2016.

4 Q And what was your email address  
5 prior to that?

6 A Rmacdonald@healthnyc.gov.  
7 Actually, it probably would have changed  
8 over in late 2015.

9 Q And that would have been to the  
10 HHC address?

11 A Correct.

12 Q I guess I didn't get into the  
13 admonitions typically. I just wanted to  
14 ask: Have you taken any medications that  
15 would impair your ability to testify  
16 truthfully and honestly today?

17 A No.

18 Q Just to make sure that, you know,  
19 you probably already know this already, but  
20 the reporter can only take down verbal  
21 response. So you have to say yes or no.  
22 You can't shake your head or go "uh-uh."  
23 She needs to kind of have clear, verbal  
24 responses.

25 Is that clear?

1 R. MACDONALD

2 A Yes.

3 Q And have you ever been deposed  
4 before, Dr. MacDonald?

5 A Yes.

6 Q When?

7 A A number of times in the course of  
8 my regular employment with Health and  
9 Hospitals and the Department of Health prior  
10 to that. I also do some expert legal work,  
11 which may involve being deposed from time to  
12 time.

13 Q Let's go through the depositions  
14 that you've, I guess, participated in.

15 When was the first time you were  
16 deposed?

17 A I'm sorry. I don't know have a  
18 list in front of me.

19 Q Have you been deposed since your  
20 position in H&H?

21 A Yes.

22 Q And when were you deposed?

23 A I was deposed most recently  
24 related to litigation related to COVID  
25 response in the New York City jails.

1 R. MACDONALD

2 Q What was the name of that case?

3 A I don't remember the exact name.

4 Q Do you remember who the plaintiff  
5 was?

6 A No.

7 Q Has anybody ever named you in a  
8 discrimination lawsuit?

9 A I don't know -- I have been named  
10 in several lawsuits related to employment.  
11 I don't know if it would be characterized as  
12 a discrimination lawsuit.

13 Q Well, the lawsuits that involved  
14 employment issues, what were those?

15 MS. CANFIELD: Objection to  
16 form. You can answer.

17 A So there was a lawsuit filed by a  
18 person employed by the Department of  
19 Corrections that named me.

20 Q What was that person's name?

21 A Nicole Adams Flores.

22 Q And you were deposed in that  
23 matter?

24 A I was not.

25 Q And then what was another lawsuit?

1 R. MACDONALD

2 A That's the only one that I'm aware  
3 of that applies to employment matters.

4 Q You were never deposed regarding a  
5 lawsuit against PAGNY?

6 A Yes, actually. Coming to mind is  
7 a lawsuit against PAGNY for a physician. I  
8 was named Dr. Bhatti, B-H-A-T-T-I.

9 Q Any other lawsuits?

10 A I'm named from time to time in  
11 patient-related lawsuits. So there have  
12 been several of those over the years.

13 Q What was that outcome of  
14 Dr. Bhatti's lawsuit?

15 A I don't recall the outcome of that  
16 matter.

17 Q I'm sorry. Were you deposed in  
18 that lawsuit?

19 A I was.

20 Q And you don't remember the nature  
21 of the lawsuit?

22 A That was an employment matter  
23 related to Dr. Bhatti felt like her  
24 evaluations were unfair. She was -- it was  
25 around the time of the transition to Health

1 R. MACDONALD

2 and Hospitals. And she had had some  
3 employment performance evaluation concerns  
4 related to her time working for Corizon, if  
5 I recall correctly.

6 And there was -- I believe that  
7 she was not offered a position with PAGNY  
8 initially through the transition, and that  
9 she was ultimately hired in a probationary  
10 manner. And that she had several  
11 performance evaluations related to that  
12 probation, which was the subject of the  
13 lawsuit.

14 Q Now, with Dr. Bhatti, when you say  
15 performance evaluation, is that the exact  
16 name of the document?

17 A I don't recall the exact name of  
18 the document that would have been discussed  
19 in those cases. It's the concept that she  
20 had probationary performance evaluations.

21 Q And what was your title when, I  
22 guess when Dr. Bhatti was working with  
23 CHS -- not CHS, with H&H?

24 A Chief of medicine.

25 Q Is this your current title?

1 R. MACDONALD

2 A No.

3 Q What is it now?

4 A Chief medical officer.

5 Q Have you also been given the title  
6 senior assistant VP?

7 A Yes.

8 Q When did that happen?

9 A That would have been 2017.

10 Q Was this a promotion?

11 A Yes.

12 Q So when you were chief medical  
13 officer, what was your salary?

14 A What was my salary?

15 Q Um-hmm.

16 A I don't recall my exact salary at  
17 that time. It would have been in the range  
18 between 250,000 and 300,000.

19 Q And then, now as senior assistant  
20 VP and chief medical officer, what is that?

21 A I think it's approximately  
22 300,000, maybe 301.

23 Q Now, has anyone outright accused  
24 you of discriminating against them?

25 A Not commonly, not that I recall.

1 R. MACDONALD

2 The lawsuit that I mentioned filed by Nicole  
3 Adams Flores included claims of  
4 discrimination. I don't know that those  
5 were specifically lodged towards me. I  
6 don't remember the exact details of the  
7 wording of that.

8 Q Has anyone ever filed an EEO  
9 complaint against you?

10 A Not that I'm aware of.

11 Q Has anyone filed an EEOC charge  
12 against you?

13 A Not that I'm aware of.

14 Q Has anyone filed a charge with the  
15 State Division of Human Rights against you?

16 A Not that I'm aware of.

17 Q Now, when was the last time you  
18 received EEO or diversity training?

19 A Annual training that I do through  
20 H&H.

21 Q How is the annual training  
22 administered?

23 A Through the online website that --  
24 it's I believe called E-Learning modules.

25 Q Now, as a manager, what is your

1 R. MACDONALD

2 understanding of your responsibility if  
3 discrimination is brought to your attention?

4 A So I would enlist assistance from  
5 our human resources department who,  
6 depending on the circumstances, would also  
7 guide me in contacting EEO professionals  
8 within Health and Hospitals.

9 Q So are you saying that you would  
10 enlist or would you report the  
11 discrimination?

12 A Well, I would report the  
13 discrimination, you know, as required, and I  
14 would seek guidance from human resources  
15 professionals to make sure I was doing that  
16 correctly.

17 Q At any point did you report  
18 Dr. Kaye's allegations of discrimination to  
19 anyone?

20 MS. CANFIELD: Objection to  
21 form. You can answer.

22 A I didn't believe that there was  
23 any lack of awareness about any of the  
24 allegations that came to my attention  
25 related to Dr. Kaye.



1 R. MACDONALD

2 Q But the question is, did you  
3 report the claims to the EEO office?

4 MS. CANFIELD: Objection to  
5 form.

6 A No. I didn't specifically report  
7 them to the EEO office.

8 Q Why not?

9 A Because I believe them to have  
10 been reported through proper channels.

11 Q And what were the proper channels?

12 A So by that I mean, I know that our  
13 human resources department was well aware  
14 and working on them, as soon as they came to  
15 the attention of CHS leadership.

16 Q When you say the human resources  
17 department, who does that consist of?

18 A I think at the time it was  
19 probably primarily Jonathan Wangel.

20 Q Anyone else?

21 A There were many other staff  
22 members of that department, but I'm not  
23 recalling specifically who would have been  
24 involved at that time.

25 Q Who was the EEO officer during

1 R. MACDONALD

2 that time?

3 A I don't know.

4 Q So you're not sure who the EEO  
5 officer is?

6 MS. CANFIELD: Objection to  
7 form. You can answer.

8 A No. I am not sure.

9 Q So, today, do you know who the EEO  
10 officer is at HHC?

11 MS. CANFIELD: Objection to  
12 form. You can answer.

13 A I know that the information is  
14 available on the website. I remember that  
15 from the training. And, again, my first  
16 point of contact to get guidance on  
17 reporting in the EEO matter would be CHS HR  
18 leadership.

19 Q Now, doesn't the policy require  
20 you, the manager, to actually report any  
21 discrimination to the EEO office?

22 MS. CANFIELD: Objection to  
23 form. Objection. You can answer.

24 A Yes. I believe it does. I would  
25 do that in consultation with the HR

1 R. MACDONALD

2 leadership, to make sure I did it correctly.

3 Q Is it your understanding that you  
4 need guidance to actually just report that  
5 an employee actually -- report  
6 discrimination to you?

7 MS. CANFIELD: Objection to  
8 form. You can answer.

9 A So I've never had one of my direct  
10 reports report discrimination to me. And so  
11 in that situation, to make sure I did it  
12 correctly, I would seek guidance from HR  
13 leadership.

14 Q Even if it wasn't your direct  
15 report, the fact that it was brought to your  
16 attention, wouldn't you be obligated to just  
17 report it to the EEO office?

18 MS. CANFIELD: Objection to  
19 form. You can answer.

20 A Again, I don't -- when there's --  
21 if an allegation was made directly to me,  
22 yes. If I became aware of an allegation  
23 that had been made to a different supervisor  
24 and our HR department was aware, then an  
25 additional report for me, simply because of

1 R. MACDONALD

2 my awareness, to my understanding, would not  
3 be required.

4 Q Now, Dr. MacDonald, what's your --  
5 let's kind of go into some little  
6 preliminary stuff.

7 Where did you get your college  
8 degree?

9 A Cornell University.

10 Q What did you get your degree in?

11 A Biology and English.

12 Q When did you get the degree?

13 A 2003.

14 Q Where did you go to medical  
15 school?

16 A Cornell University.

17 Q When did you start?

18 A 2004.

19 Q And when did you finish your  
20 degree?

21 A 2008.

22 Q Now, isn't medical school  
23 typically three years, rather than four?

24 A No.

25 Q So what happened -- so it's not.

1 R. MACDONALD

2 So you were in a four-year program?

3 A That's correct.

4 Q And why was it four-year program  
5 versus a three-year program?

6 A That's the standard in the United  
7 States.

8 Q So you're saying there's a  
9 four-year standard?

10 A Correct.

11 Q For medical school?

12 A That's correct.

13 Q Did you get any fellowships?

14 A No.

15 Q And what did you do your residency  
16 in?

17 A Internal medicine.

18 Q Where did you do your residency?

19 A Montefiore Hospital in the Bronx.

20 Q And how long did you do your  
21 residency?

22 A Three years.

23 Q When did you finish your  
24 residency?

25 A 2011.

1 R. MACDONALD

2 Q Now, what was your first job once  
3 you completed your residency?

4 A I was the deputy medical director  
5 for the Bureau of Correctional Health  
6 Services for New York City Department of  
7 Health and Mental Hygiene.

8 Q Who was your supervisor at that  
9 time?

10 A Homer Ventors (phonetic).

11 Q And this is the Department of  
12 Health and Mental Hygiene?

13 A Correct.

14 Q Now, did you have any other  
15 employment prior to your residency being  
16 completed?

17 A No.

18 Q So this was your first job?

19 A Yes.

20 Q And you started at -- when did you  
21 start, at 2011?

22 A Yes.

23 Q And what did being the deputy  
24 medical director of CHS entail at that time?

25 A So at that time CHS was a bureau

1 R. MACDONALD

2 of the Department of Health that oversaw  
3 healthcare delivery in the jail system.  
4 Which was provided through contracted means.

5 So there were a couple of  
6 different contractors over the years. And  
7 that bureau was responsible for setting  
8 policies for healthcare delivery, for  
9 oversight of the performance of the  
10 contract, for allocation of funding for  
11 different clinical priorities. And I was  
12 the medical director for that bureau. So  
13 primarily focused on the medical care.

14 Q Now --

15 A I was the deputy medical director  
16 initially for that bureau.

17 Q So what contractors were involved  
18 when you were deputy medical director?

19 A So there was -- at that time I  
20 believe it was called Prison Health  
21 Services. And at some point the name of  
22 that entity changed to Corizon. And I was  
23 the primary contractor.

24 There was also, one of the  
25 facilities had a direct employment

1 R. MACDONALD

2 relationship with Health and Hospitals at  
3 that time.

4 Q And who was that?

5 A That was the Vernon C. Bain Center  
6 in the Bronx.

7 Q And what did Vernon C. Bain Center  
8 do?

9 A It was a correctional facility  
10 that was located in the Bronx.

11 Q And who was housed there?

12 A Mostly pretrial detainees as are  
13 housed in most jails in New York City.

14 Q It wasn't a specific population,  
15 like male, female or a given age group or  
16 anything like that?

17 A It was males only. It was I think  
18 primarily people who had been arrested in  
19 the Bronx and in Queens, if I'm not  
20 mistaken. And in general, it was a less --  
21 there was no mental observation unit there.  
22 And there was no -- there was less in the  
23 way of substance use treatment. So those  
24 patients would be transferred to Rikers if  
25 they needed that level of care.



1 R. MACDONALD

2 So it was a little less acute than  
3 some of the other jails, in terms of  
4 pathology among the patient population.

5 Q Now, what were your duties and  
6 responsibilities as deputy director?

7 MS. CANFIELD: Objection to  
8 form. You can answer.

9 A I was helping the medical director  
10 and assistant commissioner with setting  
11 policy for care delivery, troubleshooting  
12 work flows. So how things are done in the  
13 clinics. Working with the IT group to  
14 optimize the use of the electronic health  
15 record to evaluate data, both for the  
16 performance of the contract, the delivery of  
17 health care, and the particular population  
18 health considerations for our patient  
19 population.

20 Q So did you develop any policies  
21 and is procedures to the jail systems in  
22 that capacity?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A Yes. The policies of CHS were

1 R. MACDONALD

2 well established, but I would have been  
3 involved in the policy revision and have  
4 input into that.

5 Q Did you review clinical care --

6 A Yes.

7 Q -- provided?

8 You said yes, right?

9 A Yes.

10 Q Did you have any part in the  
11 direct patient care?

12 A Yes.

13 Q When you say direct patient care,  
14 what exactly do you mean by that?

15 A In those years I would typically  
16 see patients one day a week at BCBC.

17 Q Did you participate in quality  
18 oversight?

19 A Yes.

20 Q Now, when did you become medical  
21 director of the bureau?

22 A That probably would have been in  
23 2012.

24 Q Were you promoted at that time?

25 A Yes.

1 R. MACDONALD

2 Q And did you apply for the  
3 promotion or was it something that was  
4 internal?

5 A It was internal.

6 Q And who was the previous medical  
7 director?

8 A Homer Ventors.

9 Q What happened to Mr. Ventors or  
10 Dr. Ventors?

11 A Dr. Ventors had been promoted to  
12 assistant commissioner for that bureau.

13 Q How did your responsibilities  
14 change when you became the medical director?

15 A They were fairly similar. You  
16 know, I think I had a higher level of  
17 decision making for the bureau. You know,  
18 previously Dr. Ventors had been filling that  
19 role. So I was advising him whereas as the  
20 medical director, I was -- had more autonomy  
21 in decision making.

22 Q Now, when Dr. Ventors was promoted  
23 to assistant commissioner, who became your  
24 supervisor?

25 A He remained my supervisor.

1 R. MACDONALD

2 Q Now, were you evaluated when you  
3 worked under Dr. Ventors?

4 A Yes.

5 Q And did you receive yearly  
6 evaluations?

7 A I don't remember the exact cadence  
8 of those evaluations, but presumably.

9 Q So is it fair to say that you had  
10 favorable evaluations during that time?

11 A Yes.

12 Q There were never any complaints  
13 about your performance?

14 A No.

15 Q But you did receive performance  
16 evaluations from Dr. Ventors at that time?

17 A Yes.

18 Q Has any staff ever filed  
19 grievances against you when you were at the  
20 Department of Health?

21 A Not that I'm aware of.

22 Q Has any staff filed any grievances  
23 against you since you've been at H&H?

24 A Not that I'm aware of.

25 Q Have you ever been the subject of

1 R. MACDONALD

2 any disciplinary proceedings since you've  
3 practiced medicine?

4 A No.

5 Q Now, as medical director, did you  
6 have ultimate responsibility and oversight  
7 over the healthcare delivered at the prison?

8 A Yes. In large part. I mean the  
9 medical care, again, Dr. Ventors was  
10 responsible for all of the care, including  
11 medical and mental health. I guess I was  
12 responsible for the care delivered through  
13 those contracts, to the extent that  
14 oversight can control that, yes.

15 Q Now, you touched on like prison  
16 health services in Corizon. Now, were these  
17 contracts -- they were administered by the  
18 Department of Health, right?

19 A Yes.

20 Q Now, when you say "administered,"  
21 what do you mean by that?

22 MS. CANFIELD: Objection to  
23 the form. You can answer.

24 A I mean that the legal contracts  
25 were held by the Department of Health. They

1 R. MACDONALD

2 issued the request for proposals. They  
3 evaluated the entities that would apply to  
4 fulfill those contracts. They entered into  
5 a legal agreement. They paid the financial  
6 balance of those contracts, and they were  
7 responsible for oversight of the performance  
8 of the contract.

9 Q Now, when did Corizon's contract  
10 end?

11 A In, I think December 31, 2015.

12 Q And did you have any part in the  
13 transition from Corizon to CHS taking over  
14 the services at the court clinics?

15 MS. CANFIELD: Objection to  
16 form. You can answer.

17 A So you're talking about -- can you  
18 repeat that question, sorry.

19 Q Did you have any part in the, I  
20 guess, the transition from, I guess, from  
21 Corizon to, I guess, the City providing  
22 direct services at that time?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A Yeah. I mean, I was involved in

1 R. MACDONALD

2 the planning to move to a different model of  
3 care delivery.

4 Q Right. Now, how long were you  
5 medical director?

6 A From sometime in 2012 to, I think  
7 August of 2015, when I moved to Health and  
8 Hospitals.

9 Q So when did your move from the  
10 Department of Health to Health and Hospitals  
11 take place?

12 A August of 2015.

13 Q Now, is it accurate to say that  
14 CHS became a separate division of H&H  
15 eventually?

16 A Sorry. I just have to log back  
17 into my computer. Yes.

18 Q And what did that entail?

19 MS. CANFIELD: Objection to  
20 form.

21 A Well, I mean, to me it entailed a  
22 creation of a new division within Health and  
23 Hospitals to provide direct service for  
24 healthcare delivery in the New York City  
25 jails.

1 R. MACDONALD

2 Q Now, what part did you play, if  
3 any, in the transition?

4 MS. CANFIELD: Objection to  
5 form. You can answer if you're  
6 able.

7 A So I was involved, you know, as  
8 part of the leadership team from the  
9 Department of Health, I was involved in the  
10 planning for the transition.

11 Q Who else was part of the  
12 leadership team?

13 A Dr. Ventors.

14 Q Who else?

15 A Nancy Aragas (phonetic), our  
16 director of nursing. Zachary Rosner  
17 (phonetic), who became the deputy medical  
18 director. Elizabeth Ford, who was the  
19 director of psychiatry for that bureau.

20 Q Who else?

21 A I think within the Department of  
22 Health that's who's coming to mind.

23 Q Anyone else?

24 A I'm sorry. Could you clarify that  
25 question.



1 R. MACDONALD

2 Q Were there any other agencies  
3 involved in the transition of the leadership  
4 team?

5 A Well, certainly Health and  
6 Hospitals was involved as well, and City  
7 Hall was involved.

8 Q So who from City Hall was  
9 involved?

10 A Patsy Yang was involved. She was  
11 at City Hall at that time.

12 Q And at that time you're saying it  
13 around -- when was this when this transition  
14 was taking place?

15 MS. HAGAN: Objection to form.

16 You can answer.

17 A So many of the staff of  
18 Correctional Health Services moved from the  
19 Department of Health to Health and Hospitals  
20 in August of 2015. The care was taken over  
21 directly on January 1st, 2016. And  
22 obviously there was planning that lead up to  
23 that in 2015.

24 Q Now, who else from City Hall  
25 besides Dr. Yang was involved?

1 R. MACDONALD

2 MS. CANFIELD: Objection to  
3 form. You can answer.

4 A I'm not aware of who else would  
5 have been involved from City Hall.

6 Q Anyone else from Health and  
7 Hospitals?

8 A I don't know the specific players  
9 involved from Health and Hospitals. I know  
10 Dr. Brom Raju (phonetic), who was the  
11 president at the time played a role.

12 Q Can you spell his last name?

13 A Raju, R-A-J-U.

14 Q Anyone else?

15 A I'm sure there were others, but  
16 I'm not -- no one else is coming to mind  
17 from Health and Hospitals.

18 Q In your current capacity, you're  
19 chief medical officer and senior assistant  
20 vice president, right, of CHS, right?

21 A Yes.

22 Q Is your salary paid completely by  
23 H&H?

24 A Yes.

25 Q And who determines ultimately what

1 R. MACDONALD

2 staff people get paid?

3 MS. CANFIELD: Objection to  
4 form. You can answer.

5 A Can you repeat the question.

6 Q Who determines the salaries of the  
7 doctors, or the clinicians, as you would  
8 say?

9 A So there's a finance department  
10 within CHS that plays a role for managers.  
11 For many of our staff there are collective  
12 bargaining agreements that dictate the  
13 salaries for different positions.

14 Q Have you ever determined how much  
15 someone got paid yourself?

16 A I don't know that I've determined  
17 how much someone got paid. I've requested  
18 salary adjudgments for staff.

19 Q Who have you requested salary  
20 adjustments for?

21 A I'm not recalling specific  
22 examples. That would often be part of my  
23 role, when somebody takes on a new position,  
24 when they take on new tasks within their  
25 position, typically. When they're promoted,

1 R. MACDONALD

2 there will be a discussion with HR and with  
3 finance regarding their compensation.

4 Q Now, you've mentioned that  
5 Dr. Ford was part of the leadership team  
6 that helped the transition and that she  
7 worked at the Department of Health; is that  
8 right?

9 MS. HAGAN: Objection to form.  
10 You can answer.

11 A Yes.

12 Q Did you hire Dr. Ford?

13 A No.

14 Q Who hired Dr. Ford?

15 A Dr. Ventors.

16 Q And do you remember when Dr. Ford  
17 was hired?

18 A No. Not exactly.

19 Q Now, when you were chief medical  
20 officer at Department of Health, who were  
21 your direct reports?

22 A So just to clarify, I was not  
23 chief medical officer at Department of  
24 Health.

25 Q I'm sorry. What was your title

1 R. MACDONALD

2 again, it was medical --

3 A Medical director for the Bureau of  
4 Correctional Health Services.

5 Q Who were your direct reports?

6 A Nancy Arias, our director of  
7 nursing, Zach Rosner, deputy medical  
8 director, Daniel Petrazelli (phonetic),  
9 director of pharmacy. Mohammed Jaffa  
10 (phonetic), I don't remember his exact title  
11 at that time. Pedro Rivera, who was the  
12 director of infection control.

13 Q This is as the medical director.  
14 And you eventually, you start at CHS in  
15 August of 2015. Who were your direct  
16 reports at that time?

17 MS. CANFIELD: Objection to  
18 form. You can answer.

19 A I don't know that I recall all of  
20 them. I will name a few if that's okay.

21 Q Sure.

22 A So Zachary Rosner became my direct  
23 report as assistant chief of medicine.  
24 Dr. Louis Cintron (phonetic) was a direct  
25 report also as assistant chief of medicine.

1 R. MACDONALD

2 Tom Hayden, director of clinical pharmacy.

3 Nancy Arias, director of nursing. There may

4 have been a few others, but they are not

5 coming to mind right now.

6 Q When did you hire Dr. Ford?

7 MS. CANFIELD: Objection to

8 form. You can answer.

9 A So to clarify, I didn't hire  
10 Dr. Ford. I became Dr. Ford's supervisor  
11 when I was promoted to chief medical  
12 officer.

13 Q Okay. When did that happen? That  
14 happened in 2017, right?

15 A Yes.

16 Q Did you evaluate Dr. Ford?

17 A Yes.

18 Q And when did you evaluate her?

19 A I'm not sure the exact dates when  
20 I evaluated her.

21 Q What was the actual form called  
22 when you evaluated Dr. Ford?

23 A I don't know the title of the  
24 specific form.

25 Q Is there more than one evaluatory

1 R. MACDONALD

2 document or instrument?

3 A I think that those documents are  
4 often under revision. So I would generally  
5 use the one that was current at the time.

6 Q Have you heard of a professional  
7 practice evaluation?

8 A I don't know that I've heard that  
9 term specifically.

10 Q But you have heard the term of  
11 performance evaluations?

12 A Yes.

13 Q So it's a professional practice  
14 evaluation. Those are the performance  
15 evaluations, right?

16 MS. CANFIELD: Objection to  
17 form. You can answer if you're  
18 able.

19 A I'm sorry. I missed that.

20 Q Strike that.

21 What did you rate Dr. Ford during  
22 the time that you evaluated her?

23 A I don't remember specifically the  
24 ratings that I gave her, but her performance  
25 was very good.

1 R. MACDONALD

2 Q Did you ever have any complaints  
3 about Dr. Ford?

4 A No.

5 Q Had anyone brought to your  
6 attention -- had anyone complained to you  
7 about Dr. Ford?

8 A I don't remember specific  
9 complaints about Dr. Ford, no.

10 Q Now, who are your direct reports  
11 since CHS assumed oversight of the forensic  
12 psychiatric court clinics?

13 A I'm sorry. Could you repeat that  
14 or clarify.

15 Q Who were your direct reports since  
16 CHS assumed oversight of the forensic  
17 psychiatric court clinics?

18 A So I don't remember the exact time  
19 course. My direct reports wouldn't have  
20 changed when that occurred. That program  
21 was under Dr. Ford in the organizational  
22 structure. It would have become under my  
23 purview when I was promoted to chief medical  
24 officer. I actually don't recall if that  
25 happened before or after the program



1 R. MACDONALD

2 actually came over.

3 Q So if I were to go to your direct  
4 reports in 2015, you have Zach Rosner, Louis  
5 Cintron, Tom Hayden, Nancy Arias, and then  
6 when you became chief medical officer  
7 in 2017, all I would have to do is add Dr.  
8 Ford; would that be accurate?

9 A Well, some of the people that were  
10 my direct reports would have become reports  
11 of other people at that time. So the org  
12 chart may have changed slightly, otherwise.  
13 But, you know, my direct reports as chief  
14 medical officer initially would have been  
15 Dr. Ford, Dr. Rosner, who became the chief  
16 of medicine. Tom Hayden, the director of  
17 pharmacy, Nancy Arias, who was at that time  
18 the chief nursing officer.

19 So it wouldn't have changed too  
20 much, but some of the direct reports that  
21 were previously mine as the chief of  
22 medicine would have gone to Dr. Rosner.

23 Q Now, who actually determined the  
24 commission work hours at the court clinics?

25 MS. CANFIELD: Objection to

1 R. MACDONALD

2 form. You can answer.

3 A Well, that's a complex question.

4 The court clinics had a long history of  
5 oversight from Bellevue and King's County  
6 Hospital when CHS took over. And the goals  
7 of that transition were really to  
8 standardize and try to give attention to the  
9 important work of those clinics, and  
10 standardize the management as much as  
11 possible.

12 So they historically and under CHS  
13 would have clinical leadership and  
14 administrative leadership. So the work  
15 hours of the clinics were determined through  
16 some combination thereof.

17 Q Let's just start with the first  
18 part. Standardized management, right; who  
19 made the determination that management  
20 needed to be standardized?

21 A So, again, CHS volunteered to take  
22 over those clinics. Understanding the  
23 importance of the work, and understanding  
24 that they at times within their parent  
25 institutions may not have been understood.

1 R. MACDONALD

2 They are kind of to the side of the clinical  
3 care that is the primary mission of most  
4 hospitals. And we wanted to bring some of  
5 the administrative systems and sort of  
6 attention that we felt our leadership team  
7 had to those clinics, to try to improve the  
8 work that was being done, to make it more  
9 efficient, to do the best job that we could  
10 for the clients and for the courts, and also  
11 to move those cases timely.

12 Q Taking back to the standardizing  
13 of the management, who specifically -- you  
14 said, first off, CHS volunteered to take  
15 over the clinics. Who at CHS volunteered?

16 A So it was a decision that we made  
17 collectively as the leadership. I think it  
18 was Dr. Ford's initial suggestion as a  
19 project where CHS could lend some benefit to  
20 the system and to the City.

21 Q And who else?

22 MS. CANFIELD: Objection to  
23 form. You can answer.

24 A So that conversation would have  
25 been primarily between myself, Dr. Ford,

1 R. MACDONALD

2 Patsy Yang, our human resources and finance  
3 leadership as well.

4 Q Human resources where?

5 A Within CHS.

6 Q Who would that be?

7 A I believe at the time it was  
8 Jonathan Wangel.

9 Q And this is at Department of  
10 Health?

11 A No.

12 MS. CANFIELD: Objection to  
13 form.

14 Q This is at H&H at this point?

15 A Yes.

16 Q And then finance is at H&H, right?

17 A Yes.

18 Q And who from finance?

19 A It probably would have been Aaron  
20 Anderson.

21 Q Now, the standardization of  
22 management, who made that determination that  
23 the clinics needed to be standardized?

24 A Again, that was the intention of  
25 standardizing the -- consolidating the

1 R. MACDONALD

2 clinics under CHS, standardizing the  
3 management of those clinics, and bringing to  
4 bear, you know, our systems, whether it's IT  
5 or administrative, to try to improve the  
6 efficiency of those clinics was a collective  
7 leadership decision with the people that I  
8 mentioned.

9 Q Now, who actually -- I guess,  
10 what -- who actually made the decision to  
11 standardize specific things? Like who's  
12 purview does that fall under?

13 MS. CANFIELD: Objection to  
14 form. You can answer.

15 A I mean, it depends on what the  
16 specific thing is. I think the conceptional  
17 framework was what I was involved in and  
18 what the leadership team was involved in.

19 The actual implementation of that  
20 means evaluating leaders for each of the  
21 different clinics, evaluating administrative  
22 staff, evaluating workflows that exist, and  
23 evaluating manners in which those things  
24 could be standardize or improved.

25 Q Who determined the salaries for

1 R. MACDONALD

2 the court -- for the center directors?

3 A I don't know.

4 Q So your direct report was  
5 Dr. Ford. So she would have been the most  
6 senior person dealing with the court  
7 clinics; am I right?

8 A Yes.

9 Q And your area of expertise, just  
10 make sure that I have this right, you're an  
11 internist, right?

12 A Yes. By training.

13 Q By training. And you've never --  
14 you have no expertise and knowledge about  
15 forensic psychiatric exams; is that right?

16 A Not specific expertise about  
17 forensic psychiatric exams. I do have an  
18 understanding from my career trajectory of  
19 where they fit, in terms of the criminal  
20 legal system in New York City, but I'm not  
21 an expert in the performance of those  
22 evaluations.

23 Q So back to the salaries, how was  
24 it determined what the -- who determined  
25 exactly what each center director got paid?

1 R. MACDONALD

2 A I mean, I don't -- I wasn't  
3 specifically involved in that discussion in  
4 general with a project like that, a  
5 transition like that. People would come  
6 over at the salaries they were making for  
7 the most part.

8 Q Was there a time where pay parity  
9 became an issue for Dr. Kaye and was it  
10 brought to your attention?

11 A I became aware of that, yes.

12 Q When you say you became aware of  
13 that, what do you remember?

14 A Well, I was not particularly  
15 involved in the issue, because it was mainly  
16 handled by Dr. Yang, HR and Dr. Ford.

17 Q Whose HR?

18 A At the time I believe it would  
19 have been Jonathan Wangel.

20 Q At any point did you have the  
21 ability to sign off on Dr. Kaye's salary?

22 A No.

23 Q Who would have had that authority?

24 A Ultimately, Dr. Yang.

25 Q And who would have had the

1 R. MACDONALD

2 ultimate authority to determine whether or  
3 not Dr. Kaye was fired?

4 MS. CANFIELD: Objection to  
5 form. You can answer.

6 A That would have been Dr. Kaye's  
7 supervisor, Dr. Ford. And that would be in  
8 consultation with HR.

9 Q So that would have been  
10 Mr. Wangel?

11 A Yeah. And someone of that high of  
12 a position, Dr. Yang would be involved in  
13 that conversation as well.

14 Q It would be Dr. Ford, Mr. Wangel,  
15 and Ms. Yang or Dr. Yang, right?

16 A Yes. And myself.

17 Q And yourself. And I just wanted  
18 to make sure, that Dr. Ford reported to you  
19 at all times, right?

20 A Yes.

21 Q So like employment decisions such  
22 as termination, promotion, et cetera, that  
23 was a collective decision between yourself,  
24 Dr. Ford, Dr. Wangel and Dr. Yang; is that  
25 right?



1 R. MACDONALD

2 MS. CANFIELD: Objection to  
3 form. You can answer.

4 A Yeah. In general. I mean, it  
5 depends on the level of the decision. And,  
6 you know, the individual supervisor has  
7 autonomy for much of that, but if decisions  
8 are complex or fraught or weighty, then  
9 others from the leadership team would be  
10 involved in that decision making as well.

11 Q Now, I just have a question. I  
12 mean, this is general, what are the  
13 conditions like at Rikers Island right now?

14 MS. CANFIELD: Objection to  
15 form. You can answer.

16 A Well, that's a complex question.  
17 Rikers Island is a complex place. And it is  
18 a jail facility which has a fraught history,  
19 which is well documented in the media and  
20 other places. It has experienced recent  
21 challenges with absenteeism and lack of  
22 staffing by security staff, which has made  
23 the conditions challenging.

24 But, in general, if you came into  
25 our clinics on Rikers Island you would see a

1 R. MACDONALD

2 fairly, ordinary operating medical clinic  
3 where people are receiving clinical care  
4 from doctors, nurses, mental health  
5 professionals.

6 There is a huge healthcare  
7 delivery operation that continues doing  
8 everything from nursing home level of care  
9 to hemodialysis. So it's a challenging  
10 environment, but we are able to provide a  
11 great deal of clinical care despite that.

12 Q At any point did you seek outside  
13 intervention to help with the services at  
14 the jail?

15 MS. CANFIELD: Objection to  
16 form. You can answer.

17 A In recent months I had made a  
18 public statement that I felt that that was  
19 required.

20 Q Would you elaborate.

21 A I wrote a letter to the city  
22 counsel suggesting that the City should seek  
23 outside assistance to deal with the  
24 situation that I just described.

25 Q Did anybody tell you to write that

1 R. MACDONALD

2 letter, Dr. MacDonald?

3 A No.

4 Q Did you face any retaliation after  
5 you wrote that letter?

6 A No.

7 Q Did anyone talk to you after you  
8 wrote the letter?

9 A Yes.

10 Q Who?

11 A Certainly my supervisors were  
12 interested in the content of the letter and  
13 my concerns raised in the letter.

14 Q Who is your supervisors?

15 A Dr. Yang.

16 Q And who else?

17 A Dr. Katz.

18 Q Were they upset that you wrote the  
19 letter?

20 A They were -- I wouldn't call it  
21 upset. I don't know that they agreed with  
22 that that was the right thing to do in that  
23 particular situation. I think they  
24 understood why I did it, and we were able to  
25 discuss it in a professional manner.

1 R. MACDONALD

2 Q So you didn't go to your immediate  
3 supervisors in this instance, you just went  
4 to city counsel specifically?

5 A That would be a function of the  
6 particular politics of that moment, yes.

7 Q When you mean that would be the  
8 function of the particular politics of that  
9 moment, what do you mean by that?

10 A In that particular moment, that  
11 was the pathway that I felt was most  
12 effective to alleviate the concerns that my  
13 patients were experiencing at that time.

14 Q Now, you're saying patients,  
15 you're the chief medical officer now, right?

16 A Correct.

17 Q So you consider the people housed  
18 at Rikers Island your patients, right?

19 A Yes. I do in general. I  
20 recognize that the proceedings of the  
21 forensic clinics, which I do oversee, that  
22 those persons are in a different  
23 relationship to my staff when they are being  
24 evaluated in those clinics.

25 Q But when you -- I'm sorry.

1 R. MACDONALD

2 A But the bulk of our work as it was  
3 for Bellevue and Kings County is clinical  
4 work for patient care. So I have to keep  
5 those two things separate in my mind.

6 Q When you went to City Hall, this  
7 wasn't part of your job; is that right?

8 MS. CANFIELD: Objection to  
9 form. You can answer.

10 A I'm not sure I understand the  
11 question.

12 Q Well, you're chief medical  
13 officer, is it your understanding that it  
14 was part of your job description to, I  
15 guess, to go around or go above your  
16 immediate supervisors and contact City Hall  
17 directly because of what was happening at  
18 the jail?

19 A I'm not sure you're characterizing  
20 the pathways there correctly. I didn't go  
21 to City Hall.

22 Q I mean, I guess the city counsel.  
23 I'm sorry.

24 A Yeah. No. I don't think it's  
25 part of my job description, per se. I think

1 R. MACDONALD

2 that was an extraordinary act which was part  
3 of my fiduciary responsibility to my  
4 patients and my staff.

5 Q You didn't tell Dr. Yang or  
6 Dr. Katz that you were doing so beforehand,  
7 right?

8 A Correct.

9 Q Why not?

10 A Because I didn't believe that the  
11 things that I was arguing for were under  
12 their control.

13 Q And when did you write this  
14 letter; do you recall?

15 A September 10th, 2021.

16 Q Of this year?

17 A Yeah.

18 Q And have you experienced any  
19 retaliation since you've written this  
20 letter?

21 A Sorry. I have to log in again.

22 I don't believe so. I've been  
23 allowed to continue in my position and do my  
24 work with my staff.

25 Q No reduction in salary?

1 R. MACDONALD

2 A No.

3 Q No reduction in staff?

4 A No.

5 Q I'm going to show you what's  
6 marked as Exhibit 1.

7 MS. HAGAN: Ms. Canfield, you  
8 should have this letter. I sent it  
9 this morning.

10 MS. CANFIELD: Okay.

11 MS. HAGAN: And Exhibit 1  
12 doesn't have Bate Stamps. It's just  
13 a letter from Dr. MacDonald.

14 (Whereupon, Dr. MacDonald Letter  
15 was marked as Plaintiff's  
16 Exhibit 1 for identification as  
17 of this date.)

18 Q It's a letter from Dr. MacDonald,  
19 dated September 10, 2021. You'll see it.  
20 And I'll give you an opportunity to review  
21 the letter.

22 MS. HAGAN: Now, have you  
23 finished reading, Ms. Canfield?

24 MS. CANFIELD: Yes.

25 Q Now, just for purposes of the

1 R. MACDONALD

2 record, since it's not Bates stamped, this  
3 is a letter from Dr. MacDonald, dated  
4 September 10, 2021. It's addressed to Keith  
5 Powers, chair of the Criminal Justice  
6 Committee, the New York City Council. I  
7 guess you sent it via email; would that be  
8 accurate, Dr. MacDonald?

9 A Yes.

10 Q Do you recognize the letter that  
11 we've just had, I guess had reviewed on the  
12 record?

13 A Yes. I do.

14 Q And it's clear that you wrote this  
15 letter, right?

16 A Correct.

17 Q You have CC'd on the letter Corey  
18 Johnson, the speaker, Vanessa Gibson, chair  
19 committee on oversight investigation; is  
20 that right?

21 A Yes.

22 Q Now, at some point in the letter  
23 you make the statement that:  
24 "Unfortunately, in 2021 we have witnessed  
25 collapse in basic jail operations, such that



1 R. MACDONALD

2 today I do not believe the City is capable  
3 of safely managing the custody of those. It  
4 is charged with incarcerating in its jails,  
5 nor maintaining the safety of those who work  
6 there."

7 What prompted you to write that,  
8 Dr. MacDonald?

9 A Again, it was a discrete situation  
10 that's developed over the course of 2021,  
11 related to absenteeism and challenges with  
12 staffing for correctional officers which had  
13 created dangerous conditions that I describe  
14 here.

15 Q Now, in this paragraph where  
16 you're seeing me hover, right, it says,  
17 "Over ten years of leadership," you have  
18 over ten years of leadership positions in  
19 healthcare in city jails. "I've seen  
20 tremendous progress in the conditions of  
21 confinement. With the reduction of deaths  
22 in custody from 21 and 24 deaths in 2012 and  
23 2013 respectively to just three deaths  
24 in 2019."

25 Where did you get those figures

1 R. MACDONALD

2 exactly, Dr. MacDonald?

3 A Those are publically reported, but  
4 they are figures related to the official  
5 mortalities in custody during those years.

6 Q So what about -- so wasn't there a  
7 spike in suicides in 2020?

8 MS. CANFIELD: Objection to  
9 form. You can answer.

10 A No. I believe there was one  
11 suicide in 2020, followed by a spike in  
12 suicides in 2021.

13 Q Right. So your letter doesn't  
14 talk about what happened in 2021, but it  
15 stops in 2019 right before the pandemic; is  
16 that right?

17 MS. CANFIELD: Objection to  
18 form. You can answer.

19 A Well, I mean, I do say a little  
20 lower down that the response -- I do address  
21 the response to COVID 19 in the system.

22 Q Now, since you've written this  
23 letter, have you gotten any of the outside  
24 help that you requested?

25 A Yes.

1 R. MACDONALD

2 Q How did that happen?

3 A So there've been a couple pathways  
4 by which the State has assisted the City in  
5 reducing the population detained in the New  
6 York City jail system.

7 Q And how is that?

8 A One was through the passage of  
9 legislation that released technical parol  
10 violators. One was through a mutual  
11 agreement to take some additional sentenced  
12 individuals to state facilities. And one is  
13 through a transfer of people living in the  
14 women's facility to temporarily to state  
15 custody.

16 Q So this is when Rose M. Singer was  
17 closed?

18 A Not yet, but people are being  
19 transferred to the state custody.

20 Q So the things you just described,  
21 did that involve the 191 people who were  
22 released?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A I believe that is the number that

1 R. MACDONALD

2 was quoted for the technical parole  
3 violators.

4 Q But there were additional people  
5 outside of beyond the 191?

6 MS. CANFIELD: Objection to  
7 form. You can answer.

8 A Yes. So there were both releases  
9 and transfers of custody.

10 Q And the transfers of custody are  
11 not being counted toward the 191 people who  
12 were actually released?

13 A That's my understanding, yes.

14 Q Were there any other measures  
15 taken since you wrote this letter?

16 A The opening of an additional  
17 facility to manage new admissions, which I  
18 recommended in the letter, has occurred  
19 since then as well.

20 Q Now, about the court clinics,  
21 right, how have the court clinics been  
22 operating during this time?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A So the court clinics were

1 R. MACDONALD

2 certain -- like anything in our society,  
3 were challenged by COVID 19. The primary  
4 pathway for the performance of the  
5 evaluation moved to remote evaluation in  
6 2020, and that continues as the primary  
7 pathway for those evaluations to occur  
8 in 2021.

9 The production of clients to the  
10 evaluation is a challenge because it  
11 requires Department of Correction staffing.  
12 So there's been a lot of focus on trying to  
13 get the Department of Correction to  
14 prioritize bringing people to the  
15 evaluations.

16 Q You said the remote evaluations  
17 started in 2020. Do you remember what month  
18 that was?

19 A Not specifically the month, no.

20 Q At any point was there -- did it  
21 ever come to your attention that there was  
22 work stoppage at the Bronx court clinic?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A I'm not aware of specific work

1 R. MACDONALD

2 stoppage.

3 Q Was there a time that the Bronx  
4 court clinic wasn't seeing any inmates?

5 A Related to COVID?

6 Q No. Like when Dr. Kaye -- I'm  
7 going to give you a specific window.

8 From October 2019 to January 2020,  
9 were you aware that there was a time during  
10 that time period where they were not seeing  
11 anybody for 730 examinations?

12 MS. CANFIELD: Objection to  
13 form. You can answer.

14 A I don't -- I know that the Bronx  
15 court clinic had struggled with evaluations  
16 compared to the other clinics. I don't know  
17 that I was aware of a specific work  
18 stoppage. I think there were often cases  
19 where supervisors had to assist with  
20 evaluations.

21 Q When you say "struggled," what do  
22 you mean by that, the Bronx court clinic  
23 struggled?

24 A Well, the volume of evaluations  
25 was lower than any other clinics. The

1 R. MACDONALD

2 staffing was a challenge with higher rates  
3 of turnover than any other clinics. And the  
4 conflict with Dr. Kaye contributed to some  
5 of the inefficiencies, in my estimation.

6 Q Let's start with the first part,  
7 the volume was lower. Why was the volume  
8 lower, allegedly in the Bronx court clinics?

9 A I think it was probably  
10 multifactorial. Each borough is different.  
11 I think the volume has been lower for quite  
12 some time.

13 Q But didn't the Bronx, unlike the  
14 other boroughs, have parole violators as  
15 well?

16 MS. CANFIELD: Objection to  
17 form. You can answer.

18 A I don't know that there was a  
19 specific role for evaluation of parole  
20 violators. That was only in the Bronx. I'm  
21 not aware of that. Could be.

22 Q How did you make the determination  
23 that the volume was lower in the Bronx  
24 versus the other boroughs?

25 A This is just my general sense from

1 R. MACDONALD

2 my understanding of the clinics.

3 Q Who told you that?

4 A Dr. Ford told me that. Dr. Jain,  
5 who I supervised subsequent to Dr. Ford.

6 Q How long did you supervise  
7 Dr. Jain directly?

8 A That would have been in an interim  
9 capacity after Dr. Ford's departure.

10 Q Would it be fair to say that  
11 Dr. Ford left in February of 2020?

12 A I don't recall the exact time, but  
13 that's sounds like it could be right, yeah.

14 Q When did Dr. Jain leave?

15 A I don't recall when Dr. Jain left.  
16 It was not -- I think he was involved in  
17 some of the troubleshooting around standing  
18 up remote evaluations through COVID. So  
19 that would have been into 2020, but I don't  
20 know exactly when he left.

21 Q Now, you also mentioned the  
22 staffing was a challenge in the Bronx; what  
23 do you mean by that?

24 A I think that there were challenges  
25 with recruitment and retention in the Bronx



1 R. MACDONALD

2 specifically.

3 Q Could you elaborate?

4 A I don't know the specifics of  
5 that, as far as which staff, you know, which  
6 positions were a struggle to fill or which  
7 staff had left. But I know from supervising  
8 Dr. Ford and Dr. Jain, that that was one  
9 thing that they were working on.

10 Q Why were there challenges in  
11 recruitment and retention, to your  
12 understanding, in the Bronx?

13 A I don't know specifically. I do  
14 think that the Bronx was a place where  
15 people seemed to think there was a lot of  
16 conflict, and where we struggled to get the  
17 staff on the same page about the reasons for  
18 transition to CHS. And Dr. Kaye's  
19 resistance to the transition was a big part  
20 of that, in my opinion.

21 Q Now, you said that there's lots of  
22 conflict in the Bronx, what did you mean by  
23 that?

24 A Just that it was difficult to work  
25 there. It was not -- it didn't feel like a

1 R. MACDONALD

2 good team work type place, was the  
3 impression that I got from those  
4 supervisors.

5 Q And you're saying the supervisors  
6 are Dr. Ford and Dr. Jain?

7 A Correct.

8 Q And what do you mean by "team  
9 work"?

10 A Well, team work would mean, you  
11 know, buying into the vision. Again, I'm  
12 framing this as CHS's efforts because of our  
13 belief in the importance of the work to try  
14 to give the court clinics the attention that  
15 they deserved, to try to troubleshoot the  
16 problems that they were dealing with. To  
17 allow them to do their work as efficiently  
18 and as well as possible. And everybody  
19 being on board with that, and seeing that as  
20 the goal, since it was, would be a measure  
21 of how well the team work is going.

22 Q And you said Dr. Kaye struggled  
23 with the transition. What do you mean by  
24 that?

25 A Well, I mean by that, that she

1 R. MACDONALD

2 didn't ever seem to buy into the framing  
3 that I just described. And rather than  
4 being focused on the work, she was focused  
5 on many different details of CHS management  
6 that she found to be problematic.

7 Q And what details of CHS management  
8 did you remember Dr. Kaye finding  
9 problematic?

10 A Well, I think there were a litany  
11 of them. Many of them were laid out in a  
12 letter that she wrote at some point, with a  
13 list of concerns that she had about the  
14 clinic and the management.

15 Q Were any of those concerns valid?

16 A In my opinion, the concerns raised  
17 in that letter were easy rebuttable.

18 Q And what letter are you  
19 referencing?

20 A I don't know the specific letter,  
21 but I know that there was a letter that  
22 was -- that I reviewed around the time of  
23 her departure that had been shared with, I  
24 think the district attorneys.

25 Q And when you got that letter, what

1 R. MACDONALD

2 was your reaction?

3 MS. CANFIELD: Objection to  
4 form. You can answer.

5 A I wasn't particularly surprised by  
6 it. Because I had been supervising two  
7 different supervisors who had struggled with  
8 Dr. Kaye's specific resistance to many of  
9 the standardization and efficiency efforts  
10 that had been made. And I knew of her  
11 dissatisfaction with CHS, and so it wasn't  
12 surprising to me.

13 Q Now, as inmates in the -- that  
14 come through the forensic psychiatric court  
15 clinics, what's your understanding of their  
16 constitutional protections?

17 MS. CANFIELD: Objection to  
18 form. You can answer if you're  
19 able.

20 A Of their constitutional  
21 protections with regard to anything  
22 specific?

23 Q Well, you know -- I guess, let's  
24 back up. First and foremost, what is your  
25 understanding of the 730 examination

1 R. MACDONALD

2 process? Like, what does it entail, from  
3 your understanding?

4 A So there's provision in New York  
5 State law that delineates when an evaluation  
6 should be performed to assess a person's  
7 mental state and their ability to assist and  
8 understand the legal circumstance that  
9 they're in, and to work with their defense  
10 attorneys to appropriately proceed with the  
11 legal case against them.

12 Q How many evaluators are necessary  
13 to give the evaluations, to your knowledge?

14 A At least two.

15 Q And what's your understanding of  
16 the 390 exam process?

17 A The 390 exam process I'm not as  
18 familiar with. I know it's a smaller  
19 proportion of the work, of the clinics.

20 Q Now, I guess, I just want to kind  
21 of be clear and have a clear record. What  
22 was Dr. Ford's exact title?

23 A Chief of psychiatry.

24 Q And what her responsibilities?

25 A She oversaw the mental health

1 R. MACDONALD

2 service within CHS, the FPECC clinics, of  
3 course, as we're discussing here. She  
4 oversaw the social work department that was  
5 responsible for discharge planning for  
6 people leaving custody.

7 Q Anything else?

8 A You know, with that comes  
9 ownership of policies and procedures,  
10 management of the many different staff in  
11 that department. Yeah. That's what comes  
12 to mind.

13 Q And Dr. Jain, what was his exact  
14 title?

15 A I don't know his exact title, but  
16 he was the director of the FPECC clinics.

17 Q Did you play a role in hiring  
18 Dr. Jain?

19 A I believe I interviewed Dr. Jain  
20 when he applied for the position.

21 Q Did you interview Dr. Ford at any  
22 point?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A No. I didn't interview Dr. Ford.

1 R. MACDONALD

2 As I mentioned, I became her supervisor when  
3 I was promoted to chief medical officer.

4 Q Now, you know, this is -- I'm  
5 going back a little bit. But how did you  
6 get your position at the Department of  
7 Health in July or June?

8 A How did I get my position at the  
9 Department of Health and mental hygiene?

10 Q Yes.

11 A I've been interested in  
12 incarceration as a sociological phenomenon  
13 before I entered medical school. And I have  
14 been interested in people who have criminal  
15 justice involvement and their health and  
16 well being for many years. And I chose my  
17 residency program in part because of the  
18 tradition there of involvement in healthcare  
19 for people with criminal justice  
20 involvement.

21 I had been involved in starting a  
22 clinic for people who had been recently  
23 released from incarceration during my  
24 residency, and I have been rotating even  
25 into the jail system during residency.

1 R. MACDONALD

2 So I had a long standing interest  
3 in the sociological and health, public  
4 health underpinnings of the interface of  
5 health and criminal justice.

6 Q Did you apply for a specific  
7 position before you started working at the  
8 Department of Health?

9 A I don't recall the details of the  
10 application process. I --

11 Q Who did you interview with,  
12 Dr. MacDonald?

13 A Dr. Vendors.

14 Q Did you know Dr. Vendors before  
15 you started at the Department of Health?

16 A I knew him through my contact with  
17 him as part of that residency work that I  
18 was doing, but not during residency.

19 Q So did you interview with anyone  
20 else besides Dr. Vendors before you started  
21 working at the Department of Health?

22 A I don't recall.

23 Q And you don't recall if you saw a  
24 specific job listing for the deputy director  
25 position?



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2 A No. I think I became aware of it  
3 because I had been in contact with  
4 Dr. Vendors. And that was the pathway  
5 through which I was doing some work inside  
6 the jail system even during residency.

7 Q But you didn't have any prior  
8 professional experience prior to this  
9 position as the deputy director; is that  
10 right?

11 MS. CANFIELD: Objection to  
12 form. You can answer.

13 A I moved into that position after I  
14 completed my residency.

15 Q Now, at any point did you write  
16 any policies when you became the chief  
17 medical officer at CHS?

18 A I've been involved in policy  
19 revision, and I'm sure I've signed off on  
20 policies since that time, yes.

21 Q When you say you signed off, what  
22 do you mean by that exactly?

23 A So CHS policies are stored in a  
24 central location electronically, and there  
25 are signed copies of the official policies,

1 R. MACDONALD

2 many of which are signed by me. You know,  
3 it depends on the individual services, who  
4 signs which policies.

5 Q I'm going to show you what's going  
6 to be marked as Plaintiff's Exhibit 2.

7 (Whereupon, FPECC Policy  
8 (NYC\_291-295) was marked as  
9 Plaintiff's Exhibit 2 for  
10 identification as of this date.)

11 Q For purposes of the record,  
12 Plaintiff's Exhibit 2 bears the Bate Stamp  
13 series NYC291 through 295.

14 I don't think this is actually  
15 addressed to you, Dr. MacDonald, but this is  
16 the FPECC policy. Do you recall this, the  
17 private practice for FPECC clinical staff  
18 members?

19 A Yes.

20 Q Now, this email actually is from  
21 Dr. Jain to Drs. Mundy, Kaye, Winkler and  
22 Owen.

23 You see that, right?

24 A Yes.

25 Q And it's dated June 28, 2018.

1 R. MACDONALD

2 You see that, right?

3 A Um-hmm.

4 Q I guess you're on some of the  
5 earlier correspondence, I would take it, but  
6 I don't see your name here.

7 A Yeah. My name is there.

8 Q And, first and foremost, what role  
9 did you play in writing the private practice  
10 policy?

11 MS. CANFIELD: Objection to  
12 the form. You can answer.

13 A I didn't write the policy. I  
14 believe I reviewed it.

15 Q And did you have any contributions  
16 to the policy?

17 A I don't remember specific  
18 contributions to the policy.

19 Q Did you review any documents in  
20 your review of the policy?

21 A I'm sorry. Say that again.

22 Q In the process of being engaged  
23 about this policy, did you review any  
24 documents referenced?

25 A No.

1 R. MACDONALD

2 Q Why not?

3 A I'm not sure I understand the  
4 question.

5 Q By any chance, did you raise any  
6 concerns about the private practice policy?

7 A No.

8 Q Why not?

9 A Because I thought that it fairly  
10 laid out guidelines that were consistent  
11 with professional practice and that had been  
12 reviewed by others with more expertise in  
13 this area, and I reviewed it and it seemed  
14 reasonable to me.

15 Q And who were the others with more  
16 expertise that you're referencing?

17 A Dr. Ford and Jonathan Wangel.

18 Q Now, are you familiar with the  
19 Conflict of Interest Board Rule 68?

20 MS. CANFIELD: Objection to  
21 form. You can answer.

22 A I'm familiar with the Conflict of  
23 Interest Board. I don't know specifically  
24 which rule is 68.

25 Q Well, the disclosure. I mean, you

1 R. MACDONALD

2 have to make yearly disclosures yourself; am  
3 I right, Dr. MacDonald?

4 A Yes.

5 Q So that same provision is invoked  
6 as far as Chapter 68 specifically in the  
7 policy itself; you see that, right?

8 A Yes.

9 Q So are you familiar with that and  
10 how it has interplayed with this private  
11 practice policy?

12 MS. CANFIELD: Objection to  
13 form. You can answer.

14 A I mean, in a broad sense, yes.  
15 The important role -- the important  
16 principle is that no employees of the City  
17 should engage in outside work that presents  
18 a conflict of interest with work that is  
19 their city duty.

20 Q Did there come a time Dr. Kaye  
21 expressed concern to you about this private  
22 practice policy?

23 A I don't recall Dr. Kaye expressing  
24 concerns specifically to me about this  
25 policy.

1 R. MACDONALD

2 Q At any point did you tell her that  
3 or anyone that Dr. Yang supports private  
4 practice as a way to retain and to recruit  
5 clinicians?

6 A Can you repeat the question.

7 Q At any point did you tell Dr. Kaye  
8 or anyone else that Dr. Yang supports  
9 private practice for clinicians as a way to  
10 retain and to recruit?

11 A I don't remember saying that, no.

12 Q Did Dr. Yang actually support the  
13 private practice policy?

14 A I do believe that she supported  
15 the policy, yes. And that there were  
16 recruitment and retention considerations at  
17 hand.

18 I mean, obviously a policy of  
19 prohibiting any outside work would be one  
20 pathway that our organization could take.  
21 But instead the assessment was that the  
22 conflicts of interest in outside work could  
23 be managed, and that that would be better  
24 for the overall operations of the clinics.  
25 And part of that was because of an

1 R. MACDONALD

2 understanding that many of the staff of the  
3 clinics have been engaged in this type of  
4 work over many years.

5 So rather than prohibiting outside  
6 work or not addressing it, our strategy was  
7 to make a clear policy that would delineate  
8 how it could be done without violating  
9 conflicts of interest law or the spirit of  
10 that.

11 Q Did you all pursue an opinion from  
12 the conflict of interest rule for this  
13 particular policy?

14 MS. CANFIELD: Objection to  
15 form. You can answer.

16 A I don't know. I know that  
17 Jonathan Wangel was involved in the  
18 development of this policy and he has  
19 background in conflicts of interest. And I  
20 felt confident that the people who were more  
21 expert than me at that end of it had looked  
22 at it, and that it was sound.

23 Q Now, wouldn't issuance of this  
24 policy be outside of your expertise? You  
25 would agree with that, right?

1 R. MACDONALD

2 MS. CANFIELD: Objection to  
3 form. You can answer.

4 A Yes. If I were to write this  
5 policy myself, I would have to seek counsel  
6 from others who are more expert in the  
7 content.

8 Q And why is that?

9 A Because this is a policy that  
10 touches on forensic practice, as well as  
11 conflicts of interest. So it's HR matters,  
12 as well as areas outside of my clinical  
13 expertise.

14 Q So, I mean, there's also  
15 implications of the OPMC and potential  
16 misconduct with the Medical Licensing Board,  
17 right?

18 MS. CANFIELD: Objection to  
19 form. You can answer.

20 A I'm not sure I understand that.

21 Q If you were actually writing  
22 policies or issuing policies outside of your  
23 area of expertise, couldn't you be subject  
24 to a complaint with the Medical Licensing  
25 Board?



1 R. MACDONALD

2 MS. CANFIELD: Objection to  
3 form. You can answer.

4 A I don't -- I mean, this would be  
5 an administrative policy, right. So I'm --  
6 my oversight of this policy is in the  
7 capacity as -- in my capacity as an  
8 administrator, not as a clinician.

9 Q But it does touch on things that  
10 are specific to the practice of forensic  
11 psychiatry, right?

12 MS. CANFIELD: Objection to  
13 form. You can answer.

14 A Certainly.

15 Q So this would be outside your area  
16 of the expertise; am I right?

17 MS. CANFIELD: Objection to  
18 form. You can answer.

19 A Yes. In the same way that I have  
20 oversight of policies for nursing or  
21 pharmacy, despite the fact that I'm not a  
22 nurse or a pharmacist.

23 Q As a doctor, each doctor has a  
24 specialty; am I right?

25 A I think that's a complicated

1 R. MACDONALD

2 question. Doctors are trained and -- have  
3 different training for sure.

4 Q Well, you have a specialty, right?

5 MS. CANFIELD: Objection to  
6 form.

7 A I have completed a residency in  
8 internal medicine and I'm board certified in  
9 internal medicine.

10 Q Right. But you're not board  
11 certified in forensic psychiatry, right?

12 A Correct.

13 Q Wouldn't it stand to reason that  
14 the OPMC would take issue with a doctor  
15 writing a policy outside of the area that he  
16 is certified in?

17 MS. CANFIELD: Objection.

18 A I'm not sure that they would.

19 Q Please finish your answer.

20 A I'm not sure that they would,  
21 provided that that physician was acting as  
22 an administrator in the oversight of that  
23 policy. The development of policy, per se,  
24 I don't think is a function of professional  
25 practice.

1 R. MACDONALD

2 Q Now, at any point did Dr. Kaye  
3 express concerns to you about HHC staff and  
4 facilities being used to conduct private  
5 forensic evaluations?

6 A No.

7 Q Were you aware of her complaint to  
8 management to that effect?

9 MS. CANFIELD: Objection to  
10 form. You can answer.

11 A I don't recall that as a specific  
12 complaint of hers. It may have been one of  
13 the things listed in the litany of concerns  
14 that I mentioned in the letter. I don't  
15 recall all the specifics.

16 Q Did you look into any of the  
17 things that Dr. Kaye alleged especially --  
18 let's stick with this issue. Did you look  
19 to see if HHC staff, the facilities were  
20 being used to conduct private forensic  
21 evaluations?

22 A Say that again.

23 Q Did you look into, did you  
24 investigate whether or not HHC staff and  
25 facilities were being used to conduct

1 R. MACDONALD

2 private forensic evaluations?

3 A I do not remember an allegation  
4 that the facilities were being used to  
5 conduct private evaluations. That was never  
6 raised to me.

7 Q Did you look at any allegations  
8 that any of forensic psychiatrists or  
9 evaluators engaged in double dipping?

10 MS. CANFIELD: Objection to  
11 form. You can answer.

12 A I don't know what you mean by  
13 double dipping.

14 Q Well, they were basically  
15 working -- they were on the City time but  
16 working elsewhere.

17 A No. I was not aware of any  
18 allegation of that.

19 Q Did you look to see to make sure  
20 that that didn't take place?

21 MS. CANFIELD: Objection to  
22 form. You can answer.

23 A I didn't specifically look into  
24 see to make sure that that didn't take  
25 place. But that was more concerted

1 R. MACDONALD

2 oversight was part of the goal of the  
3 transition. And so we had administrative  
4 staff running those clinics. We had methods  
5 of time keeping that in many cases were more  
6 robust than what had come before, to try to  
7 make sure that this work was being done  
8 appropriately.

9 I had confidence in the  
10 administrative leadership of CHS to really  
11 tighten up these clinics compared to what  
12 was happening before.

13 Q So when you mean "tighten up these  
14 clinics," what do you mean by that?

15 A Well, I mean by that  
16 standardization of work rules. So when do  
17 people take lunches, how long are the  
18 lunches, what are the work hours, how do we  
19 document when people are on site doing their  
20 work. All those things. Many of the things  
21 that Dr. Kaye did not like about what we  
22 tried to do, were specifically to make sure  
23 that there was accountability for people's  
24 time and that City resources were being used  
25 appropriately.

1 R. MACDONALD

2 Q Who made the determination that  
3 they had to be standardization of work rules  
4 to begin with?

5 A That's just a principle of  
6 management that we would all share.

7 Q But I'm asking who made that  
8 determination?

9 A I can't say a specific person who  
10 made that determination. Because, again,  
11 it's a principle of our approach.

12 Q Were you part of that decision  
13 making process?

14 MS. CANFIELD: Objection to  
15 form. You can answer.

16 A Which decision making process  
17 specifically are you referring to?

18 Q Standardization of the work rules  
19 specifically.

20 A Again, I was part of the decision  
21 making process about when CHS voluntarily  
22 decided to consolidate these clinics under  
23 the umbrella of CHS to make sure that work  
24 flows made sense, that the staff of these  
25 clinics were supported in doing their work

1 R. MACDONALD

2 as efficiently as possible.

3 That any areas of uncertainty are  
4 evaluated and addressed through policies  
5 such as this one. And the broad effort to  
6 consolidate and improve those clinics. So I  
7 was involved in that decision making. And  
8 part of that, absolutely, is standardization  
9 of both HR practice and work flow.

10 Q What is your understanding of the,  
11 I guess the hours of operation for the  
12 courts in general?

13 A I don't have much of a concept of  
14 the hours of operation for the courts in  
15 general.

16 Q Did you need -- I mean, did you  
17 know, I guess, when Dr. Kaye needed to be at  
18 the court clinics and when she didn't have  
19 to be there?

20 MS. CANFIELD: Objection to  
21 form. You can answer.

22 A I would not have the level of  
23 detail knowledge to say that.

24 Q Who would have had that level of  
25 detail knowledge?

1 R. MACDONALD

2 A Dr. Ford, Dr. Jain, in  
3 collaboration with the administrative  
4 leadership of the clinics.

5 Q Now, at any point did you become  
6 aware of Dr. Kaye's complaint about the  
7 shift change that she was experiencing?

8 A I was aware of a concern of the  
9 timing of her hours.

10 Q And who had the concern about the  
11 timing of her hours, besides Dr. Kaye?

12 A I don't know.

13 Q Was there an issue with Dr. Kaye's  
14 performance?

15 A I think in sort of -- I think the  
16 supervisors of Dr. Kaye, who I supervised,  
17 really struggled to manage her, because she  
18 was so resistant to almost every aspect of  
19 what we were trying to do.

20 I think often times even I -- that  
21 they were intimidated to giving her feedback  
22 sometimes. And so if you looked at her  
23 performance evaluations, I imagine they were  
24 good. But she took a tremendous amount of  
25 time of those supervisors related to the



1 R. MACDONALD

2 litany of concerns that were detailed in her  
3 letters, and much of the content that we're  
4 discussing here today, which had the effect  
5 of the making the clinic much less  
6 efficient. Because so much time was spent  
7 on these types of details, rather than, you  
8 know, as I've mentioned, a good team work  
9 based approach, to everyone pitching in to  
10 get the work done as efficiently and as well  
11 as possible.

12 Q Have you attributed an employee's  
13 separation previously to an inability to  
14 engage in team work?

15 MS. CANFIELD: Objection to  
16 form. You can answer if you're  
17 able.

18 A I believe that that could be an  
19 element of feedback for an employee and a  
20 performance issue, yes.

21 Q But as far as Dr. Kaye's technical  
22 performance of her job functions, you never  
23 received any complaints about that, right?

24 A Performance of evaluations  
25 themselves?

1 R. MACDONALD

2 Q Yes.

3 A Not about the content of her  
4 evaluations.

5 Q Not about the quality of her work?

6 A Correct. Not about the content of  
7 the evaluations.

8 Q So you're saying that the issues  
9 that you're identifying with Dr. Kaye was  
10 that they struggled to manage her and you're  
11 saying they, being Dr. Ford and Dr. Jain,  
12 right?

13 A Yes.

14 Q And they were intimidated by her,  
15 right?

16 A I think at times.

17 Q Who was intimidated by Dr. Kaye?

18 A I think Dr. Jain in particular,  
19 who was a newer manager, was intimidated by  
20 Dr. Kaye. That was my assessment.

21 Q And who else?

22 A I think Dr. Ford, who was a more  
23 seasoned manager, you know, was exasperated  
24 by Dr. Kaye, and continuous resistance and  
25 focus on details of employment, and also

1 R. MACDONALD

2 just the clear resistance to the  
3 philosophical rational for the  
4 standardization of the clinics.

5 I don't think she believed that we  
6 were doing this work for the reasons that we  
7 believed we were, which was to make it  
8 better. That's why we did it.

9 Q At any point did it come to your  
10 attention that Dr. Ford said that, you know,  
11 you all needed to manage Dr. Kaye out?

12 MS. CANFIELD: Objection to  
13 form. You can answer.

14 A It's possible that Dr. Ford said  
15 that. Again, it would be -- if she said  
16 that, it would be that her assessment that  
17 those elements of resistance to the effort  
18 were making it hard to operate the clinic,  
19 and that long term it might not be viable  
20 because it was such a challenge.

21 Q When someone says "manage out,"  
22 what is your understanding of that?

23 A Well, I mean, that really gets at  
24 what sometimes is our inability or our  
25 ineffectiveness at documenting in formal

1 R. MACDONALD

2 performance evaluations what the problem is,  
3 which, you know, it doesn't always happen  
4 well, and it can be hard to do even when  
5 there are clinic problems.

6 Q Is it fair to also say that  
7 managing out means that you're looking to  
8 terminate this person?

9 MS. CANFIELD: Objection to  
10 form. You can answer.

11 A I mean, only, obviously, if the  
12 issues at hand can't be remediated.

13 Q And at any point were there  
14 efforts to quote/unquote remediate the  
15 issues at hand with Dr. Kaye?

16 A I believe Dr. Ford and Dr. Jain  
17 spent a great deal of time on that.

18 Q Did you work with them in  
19 attempting to remediate quote/unquote the  
20 issues with Dr. Kaye?

21 A Only in an advisory position. So  
22 as their supervisor it was something that we  
23 discussed as a challenge that they were  
24 dealing with, and something that takes up a  
25 significant amount of their supervisory

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2 time.

3 Q Just to make sure I'm clear, there  
4 was -- you didn't really substantively  
5 participate in drafting the private practice  
6 policy; am I right?

7 A Correct.

8 Q Now, the issues that Dr. Kaye  
9 raised around the private practice policy,  
10 I'm going to ask you whether or not you  
11 agree that the policy had the potential to  
12 actually lead to these things.

13 She alleged that there would be  
14 fraud on the court that could possibly come  
15 off as an offshoot of this policy. Would  
16 you agree or disagree?

17 MS. CANFIELD: Objection to  
18 form. You can answer.

19 A I'm sorry. I didn't hear the  
20 question.

21 Q She alleged that the private  
22 practice policy, as it was written and  
23 implemented, lead to fraud on the court. Do  
24 you agree or disagree?

25 MS. CANFIELD: Objection to

1 R. MACDONALD

2 form. You can answer.

3 A The phrase you said is fraud on  
4 the court?

5 Q Yes. Are you familiar with that  
6 phrase?

7 A Not really, no.

8 Q I'll leave that one. Interference  
9 with the administration of justice.

10 MS. CANFIELD: Is that a  
11 question?

12 Q Do you recall her making or  
13 raising that issue with you, Dr. MacDonald?

14 A I'm sorry, who raising --

15 Q Dr. Kaye.

16 A Dr. Kaye raising with me --

17 Q Well, in the letter that you said  
18 that she had written a litany of complaints,  
19 do you remember that particular aspect of  
20 her complaint?

21 A Not specifically.

22 Q Violation of defendant's due  
23 process rights.

24 A Again, I know that my level of  
25 recollection of the letter was that she had

1 R. MACDONALD

2 a number of concerns about this policy,  
3 which I didn't feel to be borne out based  
4 on, again, the review of Mr. Wangel, who has  
5 a background -- who is a lawyer and has a  
6 background in conflicts of interest.

7 Q So were you tapping into  
8 Mr. Wangel's legal background? I mean, he  
9 was acting in a legal capacity, as far as  
10 you were concerned?

11 MS. CANFIELD: Objection to  
12 form. You can answer.

13 A No. Just as I was acting as an  
14 administrator, he was acting as an  
15 administrator as well, but just my  
16 assessment that this policy was  
17 appropriately vetted and did not present an  
18 undue risk as far as conflicts of interest  
19 are concerned.

20 Q When you use "appropriately  
21 vetted," who was it vetted to, to your  
22 knowledge?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A Again, Mr. Wangel and Dr. Ford,

1 R. MACDONALD

2 who both have quite a bit of expertise in  
3 these areas.

4 Q But you never saw any  
5 correspondence from the conflict of interest  
6 board that approved or disapproved the  
7 policy ultimately; am I right?

8 MS. CANFIELD: Objection to  
9 form. You can answer.

10 A Not that I'm aware of, no.

11 Q Now, at the core of this it was  
12 the violation of defendant's due process  
13 rights. Now, to your understanding, do you  
14 know what the process rights involved would  
15 be?

16 MS. CANFIELD: Objection to  
17 form. You can answer if you're  
18 able.

19 A As a legal term, I would hesitate  
20 to lay those out.

21 Q Well, in your letter, for example,  
22 you kind of talk about the horrible  
23 conditions at Rikers, right?

24 MS. CANFIELD: Objection. You  
25 can answer if you're able.



1 R. MACDONALD

2 Q In the September 10, 2021 letter  
3 that we went over earlier today, Exhibit 1,  
4 you talked about some of the deplorable  
5 conditions that the inmates had been  
6 experiencing at Rikers; am I right?

7 A At that time, yes.

8 Q And you are aware of the Eighth  
9 Amendment Protection against cruel and  
10 unusual punishment; am I right?

11 A Yes.

12 Q In this instance, with these  
13 deplorable conditions, inhumane conditions  
14 that you described, would that evoke the  
15 Eight Amendment?

16 MS. CANFIELD: Objection to  
17 form. You can answer.

18 A I would hesitate to comment on  
19 that as a physician.

20 Q Well, I mean, as a human being,  
21 I'm not asking you as a physician.

22 A As a human being and as a  
23 physician, I object to that. I did not do  
24 so on Eighth Amendment grounds.

25 Q But to your understanding the

1 R. MACDONALD

2 Eighth Amendment would be invoked; is that  
3 right?

4 MS. CANFIELD: Objection to  
5 form. You can answer again.

6 A Again, I would leave that to  
7 somebody with legal expertise.

8 Q Well, would you say that being  
9 housed in a shower where there's PCs and  
10 other -- I don't know what else would be in  
11 a shower, but appeared to be pretty bad,  
12 would you say that that's cruel?

13 MS. CANFIELD: Objection to  
14 form. You can answer.

15 A Yes.

16 Q And unusual, right?

17 A Yes.

18 Q And it would be punishment, right?

19 MS. CANFIELD: Objection to  
20 form. You can answer.

21 A I mean, it maybe, yeah. I think  
22 it's -- it's complicated exactly how that  
23 situation comes about, but, yeah.

24 Q And now we're talking about the  
25 due process rights. Now, according to the

1 R. MACDONALD

2 CPL730 statute, you know, the inmate in this  
3 instance or the defendant has a right to  
4 have legal counsel, right?

5 A Yes.

6 Q And also to be able to actively  
7 participate in the 730 process; am I right?

8 A Yes.

9 Q And so if the 730 process is  
10 compromised in any way, then their ability  
11 to participate in their defense is  
12 compromised; am I right?

13 A Potentially, yes.

14 Q Right. At any point did Dr. Kaye  
15 raise concerns how the 730 exams were being  
16 administered at the clinic?

17 A How the exams were being  
18 administered?

19 Q Right.

20 A Could you be more specific.

21 Q Well, I mean, there were issues  
22 with the redacted records. Do you recall  
23 that?

24 MS. CANFIELD: Objection to  
25 form. You can answer.

1 R. MACDONALD

2 A Yes. I mean, as I mentioned,  
3 Dr. Kaye had any number of concerns and  
4 complaints about any number of elements of  
5 the process.

6 Q What was your position on the use  
7 of redacted records?

8 A My position was that we had looked  
9 into it and we were trying to balance the  
10 legal opinions what about we were able to  
11 share with the needs of the evaluators.

12 Certainly in the name of  
13 efficiency, I would have preferred no  
14 redaction, and we would pursue that, I  
15 think, if it were legally viable based on  
16 the advice we were getting.

17 Q Let me just make sure I'm clear.  
18 You said you would have preferred that there  
19 would be no redacted medical records; am I  
20 right?

21 A For efficiency sake, yes. Because  
22 the redaction process takes time. And it  
23 could have also, though I don't think this  
24 is as significant of a concern, if it's done  
25 appropriately, it also does give less

1 R. MACDONALD

2 information.

3 Q Why would CHS at a given time  
4 insisting upon redacted records to begin  
5 with?

6 MS. CANFIELD: Objection to  
7 form. You can answer.

8 A Based on the opinion of the legal  
9 department that that was a legal  
10 requirement.

11 Q Who's legal department?

12 A I don't know specifically if that  
13 was H&H or the City's law department. Would  
14 have been one of the two.

15 Q Was H&H approaching the court to  
16 figure out or to, I guess, have these  
17 records redacted versus unredacted?

18 MS. CANFIELD: Objection to  
19 form. You can answer.

20 A I don't know the details. I know  
21 that this question was investigated and that  
22 our preference, for the sake of efficiency,  
23 as I said, would be not to redact.

24 Q Now, on the other hand, Dr. Kaye  
25 was alleging that she could not do exams

1 R. MACDONALD

2 with redacted medical records. Do you  
3 recall that?

4 A Yes.

5 Q And what do you remember?

6 A I remember that in Dr. Ford's  
7 opinion that that was not her understanding  
8 as herself someone familiar with forensic  
9 evaluation.

10 Q Did you agree with Dr. Ford's  
11 position or disagree?

12 A I agreed with Dr. Ford's position,  
13 yes.

14 Q Why?

15 A Because it seemed unreasonable to  
16 me that redaction of those particular  
17 elements would make it impossible to render  
18 an opinion. And Dr. Ford explained to me  
19 that if there were specific circumstances  
20 where there was reason to believe that those  
21 redactions had impacted the assessment, that  
22 that could be described in the report and  
23 that there would be pathways in specific  
24 cases to remedy that.

25 Q Now, I'm going to ask you just the

1 R. MACDONALD

2 context of your abilities, I guess during  
3 the time when Dr. Kaye was actually  
4 employed.

5 Did you have final decision making  
6 authority when it came to staffing decisions  
7 at that time?

8 MS. CANFIELD: Objection to  
9 form. You can answer.

10 A Again, it depends on the staffing  
11 decision.

12 Q Well, the center directors, like  
13 Dr. Kaye and her comparators, did you have  
14 final decision making authority in that  
15 context?

16 MS. CANFIELD: Objection to  
17 form. You can answer.

18 A No. I mean, a change in any of  
19 those positions would have to be done  
20 collaboratively with the leadership team  
21 that I laid out before.

22 Q And the leadership team is  
23 Dr. Yang, Ford, yourself, and Wangel, right?

24 A Yes. And Dr. Yang, Michael in  
25 finance that's needed as well for those

1 R. MACDONALD

2 decisions.

3 Q Who was the person in finance?

4 A Aaron Anderson.

5 Q He's still around?

6 A Yes.

7 Q Recredentialing, what role did you  
8 play in that?

9 MS. CANFIELD: Objection to  
10 form. You can answer.

11 A Recredentialing was -- it's  
12 primarily managed by HR under CHS. So if  
13 there were specific questions about which  
14 elements of recredentialing packet were  
15 required, they might inquire of me, but  
16 otherwise it was handled by HR and the  
17 leadership of the services.

18 Q When would HR inquire of you about  
19 recredentialing?

20 A If there was a question as to what  
21 was required for the recredentialing packet.

22 Q What exactly?

23 A Questions like which positions  
24 would require certification and CPR, for  
25 example.



1 R. MACDONALD

2 Q At any point in your career were  
3 you in charge of recredentialing?

4 A As I said, in CHS, in general, the  
5 recredentialing happens primarily through HR  
6 with input from the clinical services.

7 Q When you were at the Department of  
8 Health, at any point did you play a more, I  
9 guess, involved role in recredentialing?

10 A I would sign off on the individual  
11 packets in that role for physicians in the  
12 medicine service.

13 Q And you did not do that at CHS?

14 A No.

15 Q And I'm saying CHS, I mean I'm  
16 talking about in terms of the time when  
17 Dr. Kaye was involved in the recredentialing  
18 process. You were not involved in that,  
19 right?

20 A Correct.

21 Q Were you aware of any  
22 quote/unquote special projects involving  
23 recredentialing during your time with  
24 managing Dr. Kaye directly?

25 A No.

1 R. MACDONALD

2 Q Were you ever aware of Dr. Kaye's  
3 complaints about fishing emails to Teleakie  
4 Parker?

5 A I'm sorry. Say that again.

6 Q Did it ever come to your attention  
7 that Dr. Kaye had concerns about fishing  
8 emails when she was being asked to  
9 recredential?

10 A No. I don't think I learned of  
11 that.

12 Q Did you attend a meeting at the  
13 Bronx court clinic on January 29, 2018?

14 A Possibly.

15 Q Do you recall going to the Bronx  
16 court clinic to kind of introduce yourself  
17 of sorts?

18 A Yes.

19 Q What do you remember from that?

20 A Not a great deal. It was quite  
21 some time ago. I think we were at that time  
22 going with Dr. Ford, Dr. Yang and maybe  
23 representatives from the hospital systems,  
24 to discuss the project and to meet some of  
25 the staff from the clinics.

1 R. MACDONALD

2 Q I'm going to show you what's going  
3 to be marked as Plaintiff's Exhibit 3.

4 (Whereupon, 01/11/18 Email was  
5 marked as Plaintiff's Exhibit 3  
6 for identification as of this  
7 date.)

8 MS. CANFIELD: This is also in  
9 the packet?

10 MS. HAGAN: Today.

11 Q I'm going to give you an  
12 opportunity -- the portion that's redacted,  
13 it's actually an email to me. So it would  
14 be attorney-client privilege. I guess I  
15 could have written that.

16 MS. HAGAN: Is this Bate  
17 Stamped?

18 MS. CANFIELD: Yes. It is.

19 Q For purposes of the record,  
20 Exhibit 3 bears the Bate Stamp series --  
21 maybe it's not. I thought it was. I'm  
22 sorry. It's not Bate Stamped. Sorry.

23 It's an email from Dr. Kaye dated  
24 January 11, 2018.

25 MS. CANFIELD: And you said

1 R. MACDONALD

2 this was produced today to me?

3 MS. HAGAN: Yes.

4 MS. CANFIELD: Do you know  
5 what the document is called?

6 MS. HAGAN: The subject has  
7 confirmed CHS site visit Bronx  
8 forensic psychiatry court clinic.

9 MS. CANFIELD: It doesn't seem  
10 to be in one today.

11 MS. HAGAN: It should be in  
12 the email, but I will followup with  
13 you.

14 MS. CANFIELD: Thank you.

15 Q Now, does seeing this email  
16 refresh your recollection about attending a  
17 meeting at the Bronx court clinic on  
18 January 29 at that time?

19 A Yes. That's the meeting that I  
20 was thinking it was.

21 Q Now, do you remember meeting  
22 Dr. Kaye at that time?

23 A Yes.

24 Q What do you remember about the  
25 meeting?

1 R. MACDONALD

2 A I don't remember many of the  
3 details of the meeting. I think we might  
4 have been in her office with Bill Hicks from  
5 Bellevue was there, I remember Dr. Yang,  
6 Dr. Ford.

7 Q What did you talk about during the  
8 time you were in Dr. Kaye's office?

9 A I don't remember -- you know, I  
10 remember, as I said, the overall goal of the  
11 meeting was to introduce ourselves to  
12 discuss the big picture reasons for the  
13 change, but I don't remember specifics  
14 beyond that.

15 Q Now, at any point did you tell  
16 Dr. Kaye that CHS is taking over the court  
17 clinics so that they could use CPL to get  
18 the inmates off of Rikers?

19 A I don't think so. I mean, I think  
20 that the efficiency of the court clinics  
21 absolutely impacts people who are  
22 incarcerated. And that that was part of the  
23 organizational role.

24 Specifically, what I mean by that  
25 is, many people are held in pretrial

1 R. MACDONALD

2 detention awaiting a 730. And a 730  
3 evaluation, if it's done efficiently, can  
4 reduce the amount of time that somebody goes  
5 through that portion of the legal  
6 proceeding.

7 So part of the reason that the  
8 work is very important, of course the  
9 evaluations are important, but for that to  
10 be done efficiently, impacts whether people  
11 will be held in pretrial detention longer  
12 than they need to be.

13 So I certainly may have mentioned  
14 that as an important truth about the clinics  
15 and the operation of the clinics.

16 Q But you didn't say that CHS was  
17 planning to take over the clinics so that  
18 they could use CPL to get the inmates off of  
19 Rikers?

20 MS. CANFIELD: Objection to  
21 form. You can answer again.

22 A Absolutely not.

23 Q You are aware of Dr. Kaye's  
24 allegations that the 730 examinations were  
25 being generated, right?

1 R. MACDONALD

2 MS. CANFIELD: Objection to  
3 form. You can answer.

4 A I recall that that was one of the  
5 many things that appeared in the letter,  
6 yes.

7 Q And you dispute that, right?

8 A One hundred percent, absolutely I  
9 dispute that. We have never had any  
10 influence over the content of any  
11 evaluation.

12 Q So you did not have any influence  
13 on the Jose Gonzalez evaluation; am I right?

14 A Yes.

15 MS. CANFIELD: Objection to  
16 form.

17 Q You said yes, right?

18 A Yes.

19 Q And you would deny having any  
20 influence over the Miguel Figueroa  
21 evaluation?

22 A Yes.

23 Q And you would deny having any  
24 influence over the James Dolo evaluation?

25 A Yes.

1 R. MACDONALD

2 Q And so I'm going to ask you, at  
3 any point in your career did you write an  
4 article on dual loyalty?

5 A Yes.

6 Q What is that?

7 A Dual loyalty refers to a pull  
8 between competing interest that in the  
9 context that I was writing it about was the  
10 competing interest of a physician treating a  
11 patient and competing factors.

12 In jail, the interests of the  
13 security authority are a primary competing  
14 factor. But really, anywhere in which  
15 there's a doctor/patient relationship there  
16 are competing interests at play. And we've  
17 done some work to make sure that our staff  
18 understand those competing interests, and  
19 that they are attentive to them as they go  
20 about their work.

21 Q Now, is it to say the dual agency  
22 issues that Dr. Kaye raised?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A I think my personal reading is



1 R. MACDONALD

2 that that's a misapplication of the concept.  
3 But I think it could be seen as an analogy,  
4 yes.

5 Q How do you say it's a  
6 misapplication of the concept, explain.

7 A Well, in this case it's a  
8 misapplication because we are a group of  
9 people who are explicitly sensitive to the  
10 potential for dual agency, and we worked  
11 very hard to make sure that there's a  
12 firewall.

13 And there has not been any, in my  
14 experience, any break down of that firewall.  
15 We've maintained that, and we are people who  
16 are particularly attentive to that work.  
17 Hence, my writing in that area.

18 Q So you're particularly attentive  
19 to that work. You said "we," who's the we?

20 A I mean, everyone at CHS, the  
21 leadership team that I talked about. Dr.  
22 Ford, Dr. Yang. There was never any  
23 intention among any of us to influence the  
24 content of the evaluations.

25 Q Who spearheaded the dual agency

1 R. MACDONALD

2 policy that was ultimately issued by CHS?

3 A Which policy are you referring to  
4 specifically?

5 Q Well, specifically there was a  
6 dual agency policy, right? Who was  
7 responsible for that?

8 MS. CANFIELD: Objection to  
9 form. You can answer.

10 Do you have a policy you can  
11 show him?

12 Q I didn't even ask that. But I'm  
13 asking him because he wrote an article on  
14 dual loyalty, right, and he can see that  
15 there was a dual agency policy.

16 Do you recall that?

17 A I would like to see the policy  
18 you're referring to, if that's possible.

19 Q But you do recall ever having a  
20 discussion about that? That's the first  
21 question.

22 MS. CANFIELD: Objection to  
23 form. That's a fact.

24 A Yes, yes. Absolutely. So, again,  
25 the relationship of the forensic evaluations

1 R. MACDONALD

2 to the broader clinical service is a very  
3 important issue that we've been attentive to  
4 from the beginning. So, yes, we've  
5 discussed it.

6 Q So I'm going to share with you the  
7 dual agency policy right now.

8 Now, for purposes of the record,  
9 Exhibit 4 bears the Bate Stamp series  
10 NYC1188, 1189 and 1190.

11 (Whereupon, Email  
12 (NYC\_1188-1190) was marked as  
13 Plaintiff's Exhibit 4 for  
14 identification as of this date.)

15 Q I'll scroll back up so that you  
16 can see, I guess the origin of the email.  
17 It's actually the email. It says, "Just  
18 passing along this recently approved policy  
19 managing dual roles for forensic psychiatric  
20 examination."

21 You see that, right?

22 A Yes.

23 Q And this is January 22, 2019. You  
24 see that as well, right?

25 A Yes.

1 R. MACDONALD

2 Q Now, I'm going to scroll down.

3 Did you play any part in drafting this  
4 policy, Dr. MacDonald?

5 A I don't think I drafted this  
6 policy, no.

7 Q You played no part in it?

8 A I think I probably reviewed it  
9 before it was issued.

10 Q When you say "reviewed," what does  
11 that mean?

12 A It means Dr. Ford would have  
13 shared it with me for any feedback.

14 Q Did you provide her with any  
15 feedback on this particular policy?

16 A I don't believe so, no.

17 Q So Dr. Ford presented this to you  
18 and basically, did you tell her she can sign  
19 off on it?

20 A I mean, I don't remember  
21 specifically telling her that, but in  
22 general I would have been aware of the  
23 policies that she was signing for the  
24 clinic, yes.

25 Q Do you recall Dr. Kaye raising

1 R. MACDONALD

2 issues with you about this particular  
3 policy, or with management about this  
4 particular policy?

5 A I don't remember her raising  
6 issues with me specifically about it.

7 Q Now, there seems to be somewhat of  
8 a discrepancy between the date it was  
9 actually issued and the date that Dr. Jain  
10 shared it with staff.

11 You see here the original issue  
12 date is December 21, 2018; you see that,  
13 right?

14 A Um-hmm.

15 Q Then there is the date on top of  
16 January 22, 2019. You do see this, too,  
17 right?

18 A Um-hmm.

19 Q Do you recall what may have lead  
20 to this policy being drafted in the first  
21 place?

22 A No.

23 Q Was there any issue with Legal Aid  
24 Society and, I guess, management, CHS  
25 management?

1 R. MACDONALD

2 A I'm not recalling a specific  
3 issue.

4 Q At any point did it come to your  
5 attention that Legal Aid was objecting to  
6 the presence of Dr. Jain in the evaluation  
7 setting?

8 A It sounds vaguely familiar, but  
9 I'm not remembering specifically.

10 Q Did it ever come to your attention  
11 that they were objecting to the presence of  
12 Dr. Barbara Rioja (phonetic)?

13 A Again, I don't remember.

14 Q What's your understanding of  
15 Dr. Barbara Rioja's background?

16 MS. CANFIELD: Objection to  
17 form. You can answer.

18 A Dr. Barbara Rioja is a  
19 psychologist by training, who has a  
20 background in forensic psychology.

21 Q Isn't she involved in providing  
22 treatment to inmates?

23 A She oversees the clinical care as  
24 the co-chief of mental health, just as  
25 Dr. Ford was the chief of psychiatry.

1 R. MACDONALD

2 Q Was there a time when Dr. Rioja  
3 was wanting to sit in on the examination and  
4 Legal Aid objected to her presence there?

5 MS. CANFIELD: Objection to  
6 form. You can answer.

7 A It's possible.

8 Q What was your position when that  
9 the took place; do you recall?

10 MS. CANFIELD: Object to the  
11 form. You can answer.

12 A No. I don't.

13 Q Let me correct myself. I was  
14 Dr. Alex Garcia Mensia.

15 Do you recall?

16 A Yes. I think I do, yes.

17 Q So what do you remember of that  
18 incident that involved Dr. Alex Garcia  
19 Mensia?

20 A Not much just beyond what you've  
21 mentioned.

22 Q At any point was there  
23 objections -- did you have issues with how  
24 Legal Aid Society was engaging staff  
25 management at the Bronx court clinic?

1 R. MACDONALD

2 MS. CANFIELD: Objection to  
3 form. You can answer.

4 A Can you repeat the question.

5 Q At any point did you begin to have  
6 any concerns with how Legal Aid Society was  
7 engaging management and/or staff at the  
8 Bronx court clinic?

9 A There was a particular attorney  
10 from the Legal Aid Society in the Bronx  
11 clinic who had a lot of complaints about  
12 CHS, many of which mirrored the complaints  
13 that Dr. Kaye was raising at the time. I  
14 can't remember his name at the moment.

15 Q Now, did MOCJ and Wangel get  
16 involved in the Alex Garcia Mensia  
17 situation?

18 MS. CANFIELD: Objection to  
19 form. You can answer.

20 A I don't recall.

21 Q Did you get involved with that?

22 A No.

23 Q You didn't advice anybody or  
24 review the emails at any point?

25 A No. Not that I'm aware of.



1 R. MACDONALD

2 Q Now, I'm going to ask you some  
3 questions specific to Dr. Kaye's pay parity  
4 complaint.

5 Do you recall the issues  
6 surrounding her complaint regarding pay  
7 parity?

8 A I really didn't have much  
9 involvement with this element. It was  
10 handled through HR and primarily by Dr. Ford  
11 and Dr. Yang.

12 Q But you were CC'd on these emails;  
13 am I right?

14 A I would imagine that I was  
15 probably CC'd on some of the emails, yes.

16 Q Why didn't you feel the need to do  
17 any more than, I guess, kind of allow these  
18 other actors to I guess take lead on this  
19 particular issue?

20 MS. CANFIELD: Objection to  
21 form. You can answer.

22 A So Dr. Yang was pretty proactively  
23 involved and she oversees finance and HR,  
24 which are not under my purview. So when she  
25 takes direct involvement in an issue that is

1 R. MACDONALD

2 also more so in her area of expertise than  
3 it is in mine, I would often take that  
4 opportunity to attend to other matters.

5 Q How often did Dr. Yang get  
6 involved directly in these types of issues?

7 MS. CANFIELD: Objection to  
8 form. You can answer.

9 A It was not unusual. Dr. Yang's a  
10 very hands-on leader.

11 Q Now, what is Dr. Yang's area of  
12 expertise, just so the record is clear?

13 A Her training is in public health,  
14 but she spent many years in leadership  
15 positions of various City agencies,  
16 including the Public Hospital System and the  
17 Department of Health, where she previously  
18 served as the Chief Operating Officer.

19 Q Were you aware that Dr. Kaye was  
20 complaining that she was being paid less  
21 than the male center directors during the  
22 time that she was there?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A I did become aware of that

1 R. MACDONALD

2 complaint at some point, yes.

3 Q Did you ask what steps could be  
4 taken to address the issues?

5 A By the time I became aware of  
6 that, I was certain that Dr. Ford and  
7 Dr. Yang were working on that issue, along  
8 with HR.

9 Q I'm going to show you what's going  
10 to be marked as Plaintiff's Exhibit 5.

11 And for purposes of the record,  
12 Plaintiff's Exhibit 5 bears the Bate Stamp  
13 series NYC196 through 198.

14 (Whereupon, Email (NYC\_196-198)  
15 was marked as Plaintiff's  
16 Exhibit 5 for identification as  
17 of this date.)

18 Q Now, you see this email is from  
19 Dr. Yang to Sarah Gillen (phonetic),  
20 yourself, Dr. Ford, Jessica Laboy and Mr.  
21 Wangel; is that right?

22 A Yes.

23 Q I'm going to ask you who these  
24 people are. Who is Sarah Gillen?

25 A Sarah Gillen was the Chief

1 R. MACDONALD

2 Operating Officer at the time.

3 Q Is she still there?

4 A No.

5 Q What happened to her?

6 A She left for different employment.

7 Q Did she get fired?

8 A Not that I'm aware of.

9 Q Was she asked to resign?

10 A I don't know.

11 Q Who was Ms. Gillen's supervisor?

12 A Dr. Yang.

13 Q So she reported directly to

14 Dr. Yang?

15 A Yes.

16 Q She was the Chief Operating

17 Officer; is that right?

18 A Yes.

19 Q Who is the Chief Operating Officer

20 now?

21 A The roles changed a bit, but

22 Carlos Castellanos.

23 Q Was he the Chief Operating Officer

24 directly after Ms. Gillen left?

25 A I don't think so. I think, as I

1 R. MACDONALD

2 said, the role has changed and there's now a  
3 chief administrative officer as well.

4 Q Who is that?

5 A That is now Jessica Laboy.

6 Q So Ms. Laboy is the chief  
7 administrative officer. What was her  
8 position when Ms. Gillen was there?

9 A I don't know exactly what the  
10 division of labor between her and Jonathan  
11 Wangel was at that time.

12 Q So she had no part in Ms. Gillen's  
13 job, it was between she and Jonathan Wangel,  
14 right?

15 A Well, I'm not sure. Jessica Laboy  
16 would have also reported to Ms. Gillen, I  
17 believe.

18 Q So, then, this email is dated  
19 May 3, 2018, right?

20 A Yeah.

21 Q And Dr. Yang says, "FYI, I deleted  
22 this sentence in response to her about  
23 promises come July. Bill aware."

24 Did you understand what Dr. Yang  
25 was referencing when she wrote this email?

1 R. MACDONALD

2 A I don't remember and I don't  
3 understand it now.

4 Q When did the Bronx court clinic  
5 come on board?

6 A I don't remember the exact date.

7 Q Would it be fair to say July 2018?

8 A That sounds right, yeah.

9 Q Would it be fair to say that the  
10 Bronx court clinic was the last of the  
11 clinics to be absorbed by CHS?

12 MS. CANFIELD: Objection to  
13 form. You can answer.

14 A I don't remember that detail.

15 Q Did it ever come to your attention  
16 that Dr. Yang wanted Dr. Kaye to work  
17 elsewhere rather than CHS?

18 MS. CANFIELD: Objection. You  
19 can answer.

20 A I don't know if I would frame it  
21 that way. I think that there was a question  
22 of whether -- you know, because of several  
23 concerns that she raised about the  
24 transition about whether there would be a  
25 position that would be mutually beneficial

1 R. MACDONALD

2 for her to stay with Bellevue.

3 Q Were there efforts made to ensure  
4 that Dr. Kaye could stay with Bellevue?

5 A I believe it was explored. I  
6 don't know what the outcome of that was.

7 Q So you don't know what the outcome  
8 was. Did anyone ever tell you that no one  
9 wanted to work with Dr. Kaye?

10 A Say that again.

11 Q Did anyone ever tell you that no  
12 one wanted to work with Dr. Kaye?

13 A I did have a general sense that  
14 Dr. Kaye had a reputation for being  
15 difficult to work with. I don't know if it  
16 would be worded in exactly that way.

17 Q When did you learn that Dr. Kaye  
18 allegedly had a reputation for being  
19 difficult to work with?

20 A I'm not sure where I heard that  
21 from. I think I heard it many times over  
22 the course of the years.

23 Q Do you remember anyone telling you  
24 that specifically?

25 A Well, I remember it was perceived

1 R. MACDONALD

2 by her supervisors to be part of the  
3 retention difficulties in the Bronx.

4 Q So you're talk about Dr. Jain and  
5 Dr. Ford?

6 A Yes.

7 Q When did Dr. Ford tell you that  
8 Dr. Kaye was difficult to work with?

9 A I don't remember specific  
10 conversation to that affect.

11 Q When did Dr. Jain tell you that  
12 Dr. Ford was difficult to work with?

13 A Again, I don't remember specific  
14 conversations to that effect.

15 Q How was she difficult to work  
16 with, do you remember?

17 MS. CANFIELD: Objection to  
18 form. You can answer.

19 A Again, I'm just indicating that  
20 this was a perception that I have heard from  
21 many people about her reputation.

22 Q But you're only --

23 A I can't speak to what it was based  
24 on.

25 Q You're only naming two people.



1 R. MACDONALD

2 You say many. I want to hear the other  
3 people. Who are these other many -- two  
4 people versus many, who are they?

5 A This was a general sense from her  
6 time at Bellevue as well.

7 Q Well, who are the people at  
8 Bellevue that had issues with her, that  
9 found her to be difficult?

10 A I don't know. Again, it's just  
11 reputational, so I don't know who the  
12 specific people are.

13 Q But you're saying you heard from  
14 many people. But right now you've only  
15 given me two names. Are there any other  
16 names that come to mind?

17 A So I should be more specific.  
18 I've heard from those people who know many  
19 more people at Bellevue and that many people  
20 have said that over the years. That she had  
21 a reputation of being difficult to work  
22 with. And over the years, my experience  
23 with her supervisors was that they found her  
24 to be very difficult to work with.

25 Q Who are the people who knew the

1 R. MACDONALD

2 folks at Bellevue who found Dr. Kaye  
3 difficult to work with?

4 A I'm sorry. Say that again.

5 Q You said that there were people  
6 who knew that Dr. Kaye was difficult to work  
7 with at Bellevue. Who was this person or  
8 people that knew that she was difficult to  
9 work with?

10 A I don't know. It's just a general  
11 sense that the department, probably people  
12 in the department. I'm not sure  
13 specifically. And, again, I don't know the  
14 staff who left the Bronx clinic.

15 It's hard to establish for sure  
16 that somebody left because of the work  
17 environment or of a specific coworker. I'm  
18 just telling you that there was a general  
19 sense, that I became aware of early on, that  
20 she had a reputation for that.

21 Now, my own personal approach  
22 would always be to engage with someone  
23 independently and not take that as truth.

24 Q You do that?

25 A Yes.

1 R. MACDONALD

2 Q Okay. When did you engage  
3 Dr. Kaye independently?

4 A Well, I didn't specifically engage  
5 her independently because I wasn't her  
6 supervisor. But I certainly remained open  
7 to working with her. As did my direct  
8 reports who were her direct supervisors.

9 Q Did you ever speak to Dr. Kaye  
10 directly?

11 A I had very little interaction with  
12 Dr. Kaye directly.

13 Q When you had the very little  
14 interaction with Dr. Kaye, do you remember  
15 the context?

16 A I don't remember a specific  
17 conversation.

18 Q I'm going to go into the pay  
19 parity email. You did receive this on  
20 May 3rd; you see that, right?

21 A Yes.

22 Q So Dr. Yang responds to Dr. Kaye,  
23 "Thank you for bringing your concerns to my  
24 attention. As you know, the decision was  
25 made to postpone bringing the Bronx court

1 R. MACDONALD

2 clinic into the CHS until July 1, 2018.

3 Specifically so that you will be an employee  
4 of Bellevue through June 30th, and therefore  
5 eligible to receive the retention bonus."

6 Right? You see that, right?

7 A Yes.

8 Q "As such, I will convoy these  
9 serious concerns and your request to the  
10 attention of Mr. William Hicks, CEO of  
11 Bellevue." Right?

12 A Um-hmm.

13 Q So first and foremost, you weren't  
14 quite sure exactly when the Bronx court  
15 clinic was actually brought into CHS.  
16 Earlier I asked you was July 2018, you  
17 weren't sure. Now it's here. Would you  
18 agree that that's when it happened?

19 A Yes.

20 Q Okay. And then, do you recall  
21 anything that happened involving Dr. Kaye's  
22 retention bonus?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A I don't recall the specifics. I

1 R. MACDONALD

2 recall that it was raised as an issue about  
3 whether the retention bonus would be paid  
4 out, given the fact that it's in a  
5 transition.

6 Q At any point did Dr. Kaye question  
7 or, I guess, dispute the amount that she was  
8 paid for her retention bonus?

9 A I don't recall that the amount was  
10 an issue.

11 Q So you don't recall that Dr. Kaye  
12 had issues that she wasn't paid the full  
13 20,000 that she was entitled to?

14 A No.

15 Q At any point -- I'm going to keep  
16 going along with this.

17 Now, Dr. Kaye then goes into prior  
18 to Dr. Yang's response. I want to bring  
19 your attention to the second paragraph.

20 She says, "I learned from my union  
21 that H&H is known -- is a known pay  
22 disparity between male and female physicians  
23 who are doing the exact same work. This has  
24 been my situation. Dr. Stephen Circic,  
25 medical director of the Manhattan court

1 R. MACDONALD

2 clinic was a physician specialist line. He  
3 worked 80 percent of the full-time line and  
4 his extrapolated full-time salary was  
5 approximately 30 percent higher than mine."

6 You see that, right?

7 A I see that, yes.

8 Q Are you familiar with Steve  
9 Circic?

10 A No.

11 Q Did you ever meet Steve Circic?

12 A Not that I'm aware of.

13 Q Do you recall who is responsible  
14 for determining Dr. Circic's title?

15 A No.

16 Q Or salary?

17 A No.

18 Q Now, prior to this email on May 3  
19 of 2018, had you heard any complaints from  
20 Dr. Kaye, directly or indirectly, about pay  
21 disparities?

22 A Not that I'm aware of.

23 Q Now, when this email was brought  
24 to your attention, were any efforts made to  
25 address this through your office?

1 R. MACDONALD

2 A So I can certainly confirm that  
3 Dr. Yang was working on that, since it was  
4 addressed to her, and she was my supervisor,  
5 and she oversaw finance, HR, and managed the  
6 relationship with Bellevue. Which seems to  
7 be where the allegation is coming from her  
8 time at Bellevue, as far as I can tell from  
9 reading this email.

10 Q Now, Dr. Kaye actually asked if  
11 she can be placed in the physician's  
12 specialist line. Was there anything that  
13 stopped you or anyone else from allowing her  
14 to transition to that line rather than the  
15 attending physician position that she had?

16 MS. CANFIELD: Objection to  
17 form.

18 A I don't recall.

19 Q Now, what's your understanding,  
20 what would be the qualifications for  
21 physician specialist?

22 A I don't know.

23 Q What is your understanding of  
24 physician specialist?

25 MS. CANFIELD: Objection to

1 R. MACDONALD

2 form. You can answer.

3 A It's a title within probably  
4 governed by collective bargaining agreements  
5 that probably has a specific pay rate  
6 associated with it.

7 Q Why was Steve Circic a physician  
8 specialist and not Dr. Kaye?

9 A I don't know.

10 MS. CANFIELD: Objection.

11 Q Now, Dr. Kaye was at attending  
12 physician level three. Do you recall that?

13 A No. I wasn't aware of that level  
14 of specificity.

15 Q Do you know the difference between  
16 attending physician versus a physician  
17 specialist?

18 A Not the details of the  
19 distinction.

20 Q But both covered by the collective  
21 bargaining agreement; am I right?

22 A I believe so, yes.

23 Q So why is it that Dr. Kaye was not  
24 able to transition the physician specialist  
25 line once CHS absorbed the Bronx court



1 R. MACDONALD

2 clinic?

3 A I don't know.

4 Q Who would have made that  
5 determination?

6 A It would have been Dr. Yang in  
7 consultation with the HR leadership,  
8 Mr. Wangel, Ms. Laboy.

9 Q And you're in that leadership, I  
10 mean, right? You report to Dr. Yang; am I  
11 right?

12 MS. CANFIELD: Objection to  
13 form.

14 A I do.

15 Q Would Mr. Wangel and Ms. Laboy be  
16 your, I guess, peer as far as level of  
17 seniority in the organization?

18 A At that time Ms. Gillen was  
19 probably my peer.

20 Q So she was more senior to these  
21 other actors who were making these  
22 determinations; am I right?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A Yes.

1 R. MACDONALD

2 Q And so you are aware that Dr. Kaye  
3 is a triple board certified physician,  
4 right?

5 MS. CANFIELD: Objection to  
6 form. You can answer.

7 A I believe that I've heard that  
8 before, yes.

9 Q And if that indeed is the case,  
10 then why wouldn't she be a physician  
11 specialist versus an attending level three?

12 A I don't know the details of those  
13 lines, nor the history of her career  
14 trajectory compared to this other person.

15 Q Did you look into this once you  
16 saw this email? I mean, this email has  
17 fairly serious implications, would you  
18 agree?

19 MS. CANFIELD: Objection to  
20 form. You can answer.

21 A Again, this email was directed to  
22 my supervisor and I confirmed that it was  
23 received and that she was working on it.

24 Q What did Dr. Yang tell you about  
25 her position regarding Dr. Kaye's complaint?

1 R. MACDONALD

2 A I don't think we discussed it  
3 really.

4 Q So you never discussed Dr. Kaye's  
5 complaint with Dr. Yang?

6 A Not that I recall, no.

7 Q Do you recall Dr. Weiss?

8 A Yes.

9 Q And what do you remember about  
10 Dr. Weiss?

11 A Dr. Weiss is a doctor in the --  
12 who was initially in the Manhattan court  
13 clinic.

14 Q Where is he now?

15 A He's now a director of the Bronx  
16 court clinic.

17 Q And Dr. Weiss is in the physician  
18 specialist line; are you aware of that?

19 MS. CANFIELD: Objection to  
20 form.

21 A I was not aware of that.

22 Q So why would Dr. Weiss be in the  
23 physician specialist line and not Dr. Kaye?

24 MS. CANFIELD: Objection to  
25 form. Lacks foundation.

1 R. MACDONALD

2 A I don't know.

3 Q So I'm going to direct your  
4 attention to another exhibit, and this would  
5 be Plaintiff's Exhibit 6.

6 (Whereupon, Email (NYC\_204-207)  
7 was marked as Plaintiff's  
8 Exhibit 6 for identification as  
9 of this date.)

10 Q And Plaintiff's Exhibit 6 bears  
11 the Bate Stamp series NYC204 through 207.  
12 And I'm going to share the screen now.

13 MS. CANFIELD: Do you know  
14 when that was provided?

15 MS. HAGAN: That was  
16 previously produced? Not today.

17 MS. CANFIELD: Thank you.  
18 That's 204 to 207?

19 MS. HAGAN: Yes, 207.

20 Q I'm going to start at the bottom  
21 of the email. The bottom of the email deals  
22 with Dr. Kaye's complaint of the pay parity.  
23 You see that, right?

24 A Um-hmm.

25 Q And then the subsequent email is

1 R. MACDONALD

2 from Dr. Yang to Ms. Gillen, Jessica Laboy,  
3 yourself, Dr. Ford, Aaron Anderson that you  
4 referenced earlier, I guess, this guy from  
5 finance, right?

6 A Yes.

7 Q And Mr. Wangel; am I right?

8 A Yes.

9 Q And at this point, Dr. Yang is  
10 asking for collective input, right,  
11 regarding her complaint? You see this,  
12 right, Dr. Kaye's complaint?

13 A Yeah. I mean, the email is  
14 directed to Sarah Gillen and Jessica Laboy.  
15 The others are CC'd.

16 Q Right. But you all have, I guess  
17 the CC'd individuals with the exception of  
18 Mr. Wangel and Mr. Anderson, you and  
19 Dr. Ford are probably closer to Dr. Kaye  
20 than the other individuals on this email; am  
21 I right?

22 MS. CANFIELD: Objection to  
23 form. You can answer.

24 A In the organizational chart, but I  
25 interpret the to line to mean that those are

1 R. MACDONALD

2 the people who are primarily responsible for  
3 the next steps and the others are CC'd for  
4 awareness.

5 Q I'm going to scroll up some.

6 Dr. Yang again emails now you and  
7 Ms. Gillen and then Dr. Ford. It's to  
8 everyone at this point. I don't know if  
9 that's any delineation in your mind at this  
10 point, but here you have on May 3rd at 3:36.

11 She says, "In the meantime, we  
12 should brainstorm for July, but not the  
13 entire FPECC crew. I propose to send her  
14 this reply below and separately sanitize her  
15 email and send it to Bill and copy her,  
16 removing editorials and elephantine quotes."

17 Do you recall what she was  
18 referencing when she said elephantine?

19 A I don't know what she meant by  
20 that.

21 Q At some point Dr. Kaye alleged  
22 that Dr. Ford said to her that, when she  
23 brought up the pay parity issue in the past,  
24 that getting things done like around here is  
25 like herding elephants.

1 R. MACDONALD

2 Do you recall anything like that  
3 being said or relayed to you?

4 A No.

5 Q At any point did Dr. Ford talk to  
6 you about Dr. Kaye's complaints about pay  
7 parity?

8 A No.

9 Q She never discussed that she tried  
10 to address the issue with Dr. Kaye?

11 A Not that I'm -- I don't recall the  
12 outcome of the discussion that was set off  
13 by this email.

14 Q Did Dr. Ford ever have any  
15 influence on how much each director got paid  
16 at their respective clinics?

17 A She wouldn't be the final decision  
18 maker, she'd propose salary increases for  
19 specific reasons. And those would go to HR,  
20 and that would have to be sorted out with HR  
21 and finance, and also understanding the  
22 collective bargaining agreement and how  
23 those impact people's compensation.

24 Q But to be clear, the final  
25 decision maker in terms of salary and the

1 R. MACDONALD

2 actual, I guess corporate title would have  
3 been Dr. Yang; am I right?

4 MS. CANFIELD: Object to the  
5 form. You can answer.

6 A Yeah. When Dr. Yang is involved  
7 in a discussion at this level, she would be  
8 the ultimate decision maker, yes.

9 Q So Dr. Yang proposed the following  
10 language: "Dr. Kaye, thank you for bringing  
11 your concerns to my attention. As you know,  
12 the decision was made to postpone -- and  
13 this is what we talked about earlier, right?

14 A Yes.

15 Q So now I'm going to scroll up  
16 more, right.

17 A Yeah.

18 Q Then Jonathan Wangel says, "This  
19 is a EEO. Strongly suggest Blanch should be  
20 moved in."

21 Now, why Blanch Greenfield being  
22 moved into this?

23 MS. CANFIELD: Objection to  
24 form. You can answer if you're  
25 able.



1 R. MACDONALD

2 A I don't know.

3 Q Who is Blanch Greenfield?

4 A Blanch Greenfield is a I believe  
5 labor attorney. I don't know her exact  
6 title.

7 Q Was she ever the agency EEO  
8 officer?

9 A I don't know.

10 Q But she's an attorney; you would  
11 agree to that, right?

12 A I believe so, yes.

13 Q Did you ever confer with  
14 Ms. Greenfield about Dr. Kaye?

15 A No.

16 Q Did you ever confer with  
17 Ms. Greenfield about any EEO matters?

18 A No, not exactly. I think I may  
19 have conferred with Ms. Greenfield about  
20 that matter that I mentioned to you  
21 regarding Nicole Adams-Flores, who was an  
22 employee of the Department of Correction.

23 Q When you reference  
24 Ms. Adams-Flores, what do you recall about  
25 that?

1 R. MACDONALD

2 A About that matter or?

3 Q Yes. About Ms. Flores' complaint  
4 in terms of -- let's start with, what was  
5 your position in relation to Dr. Adams  
6 Flores?

7 MS. CANFIELD: Objection to  
8 form. You can answer.

9 A So I was just performing the  
10 duties that we discussed here, along the  
11 time course that we did. So chief of  
12 medicine and then chief medical officer.

13 Q Did Dr. Adams-Flores report to  
14 you?

15 A No.

16 Q How did you interact with her,  
17 then?

18 A Well, she was not even part of  
19 Health and Hospitals or CHS. She was -- had  
20 a position within the Department of  
21 Correction, which involves some interface  
22 with health services. So we would interact  
23 in that capacity.

24 Q So why did you engage  
25 Ms. Greenfield about Dr. Adams-Flores?

1 R. MACDONALD

2 MS. CANFIELD: Objection. You  
3 can answer. To the extent it's not  
4 privileged.

5 A As I mentioned, Ms. Adams-Flores  
6 had several lawsuits, as I understand it,  
7 against her employer, and some of those  
8 expanded to include members of CHS, and I  
9 was named in one of those.

10 Q How was she able to name you in  
11 her lawsuit, Dr. MacDonald, if you did not  
12 supervise her?

13 MS. CANFIELD: Objection to  
14 form. You can answer if you're  
15 able.

16 A That's a good question. I don't  
17 know the answer to that. That's probably  
18 the content of my discussion with  
19 Ms. Greenfield.

20 Q How often did you speak to  
21 Dr. Adams-Flores?

22 A Probably a couple times a month.

23 Q Did you have the ability to impact  
24 the conditions of her employment?

25 A I don't think so. In general, she

1 R. MACDONALD

2 may have had a position that involved  
3 interface between agencies. So one could  
4 imagine that we might have feedback for how  
5 she was doing in that role, but nobody ever  
6 solicited such feedback from me.

7 Q At one point didn't  
8 Dr. Adams-Flores seek reasonable  
9 accommodation from Dr. Yang and Dr. Yang  
10 denied her request?

11 MR. ABRAMOFF: Objection to  
12 form. You can answer.

13 A I remember something to that  
14 effect, yes, in her prior employment.

15 Q How Dr. Yang have the ability to  
16 affect or to deny her request for leave?

17 MS. CANFIELD: Objection to  
18 form. You can answer.

19 A I think that that allegation was  
20 made from a time when she was previously  
21 employed by CHS.

22 Q So at that time you were also  
23 employed with CHS, right?

24 A Yes.

25 Q And so wouldn't Dr. Adams-Flores

1 R. MACDONALD

2 have been under your supervision if she was  
3 under Dr. Yang's supervision?

4 A No. Because I was the chief of  
5 medicine and she worked in mental health.

6 Q So you had no part in mental  
7 health?

8 A Correct.

9 Q Even though she was a clinician?

10 A At that time, correct.

11 Q But Dr. Adam-Flores' request for  
12 reasonable accommodation dealt with child  
13 care issues and pregnancy. Do you recall  
14 that?

15 MS. CANFIELD: Objection to  
16 form. It's a completely different  
17 lawsuit, but you can answer if  
18 you're able.

19 A I learned about that after the  
20 fact.

21 Q And Dr. Kaye had child care issues  
22 as well; you're aware of that, right?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A I don't remember that

1 R. MACDONALD

2 specifically, actually, but.

3 Q You don't recall Dr. Kaye  
4 complaining the shift change is impacting  
5 her ability to provide child care for her  
6 children?

7 MS. CANFIELD: Objection to  
8 form. You can answer.

9 A I remember that she had a problem  
10 with the shift change. I don't believe I  
11 was involved at that level of detail.

12 Q At any point did it come to your  
13 attention that Dr. Ford had issues with  
14 child care?

15 MS. CANFIELD: Objection to  
16 form. You can answer if you're  
17 able.

18 A At times.

19 Q Wasn't Dr. Ford allowed to have a  
20 flexible schedule so she could address her  
21 child care issues?

22 MS. CANFIELD: Objection to  
23 form. You can answer.

24 A Dr. Ford was a manager and she had  
25 a flexible managerial schedule.

1 R. MACDONALD

2 Q And you're saying that Dr. Kaye  
3 was not a manager?

4 A I don't believe that she was  
5 because she was in a represented title.  
6 That's maybe a technical distinction within  
7 HR, but she was paid hourly, is my  
8 understanding, versus being a manager, which  
9 would require to come out of the union.

10 Q So you're saying that Dr. Kaye for  
11 over 20 years was paid an hourly rate?

12 MS. CANFIELD: Objection to  
13 form. You can answer.

14 A What I'm saying is that she was  
15 represented and in a union and in a union  
16 title, and that the roles for those are  
17 different.

18 Q Now, you are aware that Dr. Kaye  
19 had a flexible schedule up until CHS took  
20 over management; am I right?

21 MS. CANFIELD: Objection to  
22 form. You can answer.

23 A That seems plausible.

24 Q And when you all took over  
25 management, did all the center directors

1 R. MACDONALD

2 have the same hours?

3 MS. CANFIELD: Objection to  
4 form. You can answer.

5 A I believe trying to standardize  
6 that was part of the standardization that I  
7 referred to.

8 Q The question is, did they actually  
9 have the same hours as Dr. Kaye?

10 A I don't know.

11 Q Do you know if any of the other  
12 managers had their hours changed upon the  
13 transition?

14 MS. CANFIELD: Objection to  
15 form.

16 A My understanding was that it was a  
17 standardization across the board.

18 Q My question to you is, do you know  
19 for a fact that all of the center directors  
20 had the same hours?

21 A No.

22 Q And my next question was, do you  
23 know if any of the other center directors  
24 had their shift change upon the absorption  
25 of the court clinics?



1 R. MACDONALD

2 A No.

3 Q Now, Dr. Yang then responds to you  
4 guys, "I can do that, but then I'm dumping  
5 BHC into the soup."

6 Is BHC Bellevue?

7 A Yes.

8 Q "I don't know and I don't want to  
9 know what they did to address her EEOC  
10 issues." You see that, right?

11 A Yes.

12 Q Now, it doesn't sound like she's  
13 trying to deal with the problem if she says  
14 she doesn't want to know.

15 What is your position on that?

16 MS. CANFIELD: Objection to  
17 form. You can answer.

18 A I think she's referring to the  
19 fact that a prospective employer who will be  
20 employed with us in the future in this  
21 arrangement is making an allegation about  
22 her current and long standing employer, who  
23 is distinct from CHS.

24 Q But the pay disparity continued  
25 when she was absorbed in CHS; am I right?

1 R. MACDONALD

2 MS. CANFIELD: Objection to  
3 form. You can answer.

4 A Well, again, I don't know the  
5 details.

6 Q Now, Dr. Kaye complained that she  
7 was only the director that was required to  
8 work nine hours a day. Were the other  
9 directors required to work nine hours?

10 MS. CANFIELD: Objection to  
11 form. You can answer.

12 A I don't know.

13 Q Now, then there's an email from  
14 Sarah Gillen to Dr. Yang, Jonathan Wangel,  
15 yourself, et cetera. And now she says,  
16 "Jessica is reviewing the salary at the time  
17 we planned the transition. I believe at the  
18 time she was the highest paid, but Jessica  
19 will confirm the numbers. Right. At this  
20 moment two of her colleagues transitioned to  
21 management roles which has increased their  
22 pay above hers, but doesn't consider the  
23 union benefits, differentials, et cetera,  
24 that she receives. Jessica will send in  
25 full shortly."

1 R. MACDONALD

2 Now, do you recall that email?

3 A I don't remember this email  
4 specifically, but I do remember in general,  
5 that there was a pathway for her to become a  
6 manager that may have increased her  
7 compensation and she was not interested in.  
8 I believe that to be the outcome, as I  
9 understood it, of this matter.

10 Q Dr. Kaye alleges that the  
11 physician specialist title was still a union  
12 title that would have allowed her to  
13 increase her salary, and also it was a title  
14 that Steve Circic and Dr. Weiss had had.

15 Why wasn't that an opinion rather  
16 than her role as a managerial title?

17 MS. CANFIELD: Objection to  
18 form. You can answer.

19 A Yeah. I mean, as a general rule,  
20 we try to have managers in CHS be in  
21 managerial titles and not be represented.

22 Q But Dr. Weiss was in a managerial  
23 title, why was it that he was able to work  
24 in the physician specialist title?

25 MS. CANFIELD: Objection to

1 R. MACDONALD

2 form. There's no foundation. You  
3 can answer.

4 A I'm not aware that that's the  
5 case.

6 Q What about Dr. Circic, why was he  
7 allowed to work in that title?

8 MS. CANFIELD: Objection.

9 A I am not aware of that at  
10 Bellevue.

11 Q Then Dr. Yang responds, "Thanks,  
12 no urgency for the -- info. We will need to  
13 be able to offer a position that suits the  
14 needs at FPECC. It is fair and equitable to  
15 the scope and responsibility. We can offer  
16 her a management position comparable to  
17 Winkler and Mundy to run the Bronx under us.  
18 Talk later."

19 Now, do you recall what  
20 Dr. Winkler's role was prior to his  
21 promotion?

22 MS. CANFIELD: Objection. You  
23 can answer.

24 A No.

25 Q When you met Dr. Kaye, where was

1 R. MACDONALD

2 Dr. Winkler working?

3 A I think he was one of the  
4 examiners in Brooklyn, if I'm not mistaken.

5 Q Dr. Winkler worked under Dr. Kaye;  
6 would you agree with me?

7 A Oh, yes. I'm sorry. I'm  
8 mistaken. Yes.

9 Q And Dr. Kaye trained Dr. Winkler;  
10 am I right?

11 MS. CANFIELD: Objection to  
12 form.

13 A I don't know that.

14 Q Would you say that Dr. Kaye was  
15 the longest serving forensic evaluator of  
16 the FPECC system?

17 A I don't know that specifically. I  
18 have no reason to dispute it, though.

19 Q Let's keep going.

20 Do you recall seeing this chart,  
21 the salary from Jessica Laboy?

22 A No. I am copied on this email, so  
23 I probably reviewed it but...

24 Q Yeah. You are copied.

25 Now, this Kanish Salonki

1 R. MACDONALD

2 (phonetic), is this a man or a woman?

3 A I don't know.

4 Q Oliver Harper, I'm taking that's a  
5 male, right?

6 A Yes.

7 Q You met Dr. Mundy; am I right?

8 A Yes.

9 Q Then you have Dr. Kaye. Now,  
10 there's a dispute about exactly how much she  
11 was actually paid at this time. It says  
12 here that her salary is \$191,571. However,  
13 Dr. Kaye does not agree with that.

14 What documents do you know were  
15 used to determine exactly what the salary  
16 was?

17 A I don't know.

18 Q Why was Dr. Mundy a senior  
19 director?

20 MS. CANFIELD: Objection to  
21 form. You can answer.

22 A So here I believe that senior  
23 director refers to a managerial title, that  
24 he would be moving into.

25 Q But Dr. Mundy didn't have anywhere

1 R. MACDONALD

2 near as much experience as Dr. Kaye. Why  
3 was he allowed to work in a senior director  
4 capacity and she was not?

5 MS. CANFIELD: Objection to  
6 form. You can answer.

7 A Yeah. I believe that was because  
8 he was a managerial position.

9 Q He also happens to have a higher  
10 civil service title here. Dr. Kaye is  
11 listed as an attending physician two, and  
12 Dr. Mundy is listed as an attending  
13 physician three. Why is that?

14 MS. CANFIELD: Objection to  
15 form. You can answer.

16 A I don't know. All this would be  
17 before CHS took over the clinic. So I'm not  
18 sure what the explanation for that would be.

19 Q Were you aware that Dr. Kaye's  
20 salary dropped after this pay differential  
21 was actually administered to her?

22 MS. CANFIELD: Objection to  
23 form and foundation. You can  
24 answer.

25 A No.

1 R. MACDONALD

2 Q But you have no explanation for  
3 why Dr. Mundy was in a higher corporate  
4 title than Dr. Kaye, right?

5 MS. CANFIELD: Objection to  
6 form. Asked and answered. You can  
7 answer again.

8 A No.

9 Q And you have no idea why she was  
10 in a higher organizational title, right?

11 MS. CANFIELD: Objection to  
12 form. You can answer again.

13 A Well, I think you're  
14 misrepresenting that column where it says  
15 new title with CHS. Again, that's  
16 reflective of a managerial position that was  
17 also offered to Dr. Kaye.

18 Q But there's nothing in writing  
19 that said that it was offered to her; am I  
20 right?

21 MS. CANFIELD: Objection to  
22 form. You can answer.

23 A I don't know.

24 Q Who would have provided Dr. Kaye a  
25 written offer of the managerial title?



1 R. MACDONALD

2 A I think it would be an informal  
3 discussion of her options first. Then if  
4 she indicated that she was not interested in  
5 coming out of the union, that would be a  
6 limitation to the positions that she might  
7 be offered.

8 Q She asked for the physician  
9 specialist title, why couldn't she get that?

10 MS. CANFIELD: Objection to  
11 form. Asked and answered. You can  
12 answer again.

13 A I don't know.

14 Q Would you agree that the physician  
15 specialist title was a higher paid title  
16 than the attending physician title?

17 MS. CANFIELD: Objection to  
18 form. You can answer.

19 A That's my assumption, yes.

20 Q Now, CHS lowered Dr. Kaye from an  
21 attending physician three to an attending  
22 physician two. Wouldn't that be a violation  
23 of the collective bargaining agreement?

24 MS. CANFIELD: Objection to  
25 form. No foundation. You can

1 R. MACDONALD

2 answer.

3 A I'm not aware of that happening.

4 Q Well, she's attending physician  
5 two here, right?

6 A That's what's written on this  
7 email.

8 Q Now, being that she's the most  
9 senior person here, wouldn't she have been  
10 an attending physician three at some point?

11 A I don't know where the information  
12 from this email came from. Again, she was  
13 employed by Bellevue at that time.

14 Q So you would disagree that she was  
15 an attending physician three at Bellevue?

16 A No. I just don't know.

17 Q So now I'm going to show you  
18 what's going to be marked as Plaintiff's  
19 Exhibit 7.

20 MS. CANFIELD: Ms. Hagan, I  
21 was wondering, after this exhibit or  
22 perhaps before, is it possible we  
23 can take a lunch break or bathroom  
24 break, or refreshment break or  
25 something?

1 R. MACDONALD

2 MS. HAGAN: Why don't we take  
3 a lunch break. Why don't we get  
4 back together at two.

5 MS. CANFIELD: Do you  
6 anticipate this deposition going all  
7 day to six?

8 MS. HAGAN: Yeah.

9 (Whereupon, a recess was taken  
10 from 1:06 p.m. to 2:06 p.m.)

11 Q Now, Dr. MacDonald, I'm going to  
12 show you what's going to be marked as  
13 Plaintiff's Exhibit 7.

14 A Okay.

15 Q Plaintiff's Exhibit 7 bears the  
16 Bate Stamp series NYC379 to NYC380.

17 MS. CANFIELD: Was this sent  
18 to me?

19 MS. HAGAN: Yes. In October.

20 MS. CANFIELD: Thank you.

21 (Whereupon, Email (NYC\_379-380)  
22 was marked as Plaintiff's  
23 Exhibit 7 for identification as  
24 of this date.)

25 Q It's an email from you,

1 R. MACDONALD

2 Dr. MacDonald, to Mr. Wangel and Ms. Laboy.  
3 I'm going to scroll down to the bottom of  
4 the email. It starts on July 9, 2018. And  
5 it says, the subject is from you that says,  
6 "Can you get me year to date pay for  
7 everyone with the title attending  
8 physician," right?

9 A Uh-huh.

10 Q Now, do you recall the context in  
11 which this was sent, Dr. MacDonald?

12 A I think we were trying to look at  
13 some productivity measures for the clinical  
14 staff working on Rikers Island.

15 Q And what do you mean by  
16 "productivity measures"?

17 A Looking at different types of  
18 encounters that they might be filling out in  
19 the electronic health record, as a function  
20 of how many shifts they've done or how much  
21 they've been paid over a time period.

22 Q And you were saying Rikers Island,  
23 right?

24 A Yes. This was I think primarily  
25 looking at the clinical care.

1 R. MACDONALD

2 Q I'm going to scroll up here.

3 There's an email from you from I guess -- I  
4 guess there's another email from Mr. Wangel  
5 to you and Ms. Laboy.

6 You see that, right?

7 A Um-hmm.

8 Q And the response the year to date  
9 through July 13th is Villar.

10 Do you know who that person is?

11 A No.

12 Q Dr. Kaye.

13 A Yes.

14 Q Dr. Weiss.

15 A Yes.

16 Q Dr. Harper.

17 A Yes.

18 Q And Dr. Solanki.

19 A Yeah.

20 Q Now, do you recall the breakdown  
21 as to whether or not these other individuals  
22 were full-time employees versus part-time  
23 employees?

24 A No.

25 Q So then we're going to scroll up.

1 R. MACDONALD

2 And you say, "Oh, sorry, I meant for PAGNY  
3 jail care. I realize that might take a  
4 while and it's not urgent."

5 What do you mean by that?

6 A Well, I confirmed from what I  
7 suspected is that I was intending to look at  
8 the clinica care in the jail facilities, and  
9 that's why I requested this information.

10 Q So you weren't trying to address  
11 the pay parity issues involved with  
12 Dr. Kaye?

13 A No.

14 Q But you never followed up here  
15 after these individuals were listed, right?

16 MS. CANFIELD: Objection to  
17 form. You can answer.

18 A Yeah. That's correct. That  
19 wasn't the information I was looking for.

20 Q So you basically weren't looking  
21 into this yourself at all?

22 A No. Not in that instance.

23 Q In any instance did you look into  
24 the matter?

25 A Again, as we discussed previously

1 R. MACDONALD

2 in the deposition, just to confirm that  
3 Dr. Yang and our HR staff were investigating  
4 that.

5 Q I'm going to show you some more  
6 emails.

7 Now, we talked about, you said  
8 that Dr. Kaye made a number of complaints,  
9 right?

10 A Yes. I was referring specifically  
11 to the letter which summarized most of them,  
12 I think.

13 Q Right. But there were other  
14 complaints prior to that. Do you recall an  
15 inmate by the name of Miguel Figueroa?

16 A The name is familiar to me.

17 Q What do you remember?

18 A I'm not remembering the specifics  
19 of his care or evaluation.

20 Q Do you recall him being the EMT  
21 killer?

22 MS. CANFIELD: Objection to  
23 form. You can answer.

24 A No.

25 Q You said no?

1 R. MACDONALD

2 A That's correct. I don't.

3 Q Do you recall him presenting  
4 issues regarding force orders?

5 A No.

6 Q Do you recall Dr. Kaye raising  
7 concerns about the force order, or I guess  
8 trying to circumvent the force order  
9 process?

10 MS. CANFIELD: Objection to  
11 form. You can answer.

12 A No.

13 Q Do you recall Dr. Kaye raising  
14 concern about redacted medical records?

15 MS. CANFIELD: Objection to  
16 form. You can answer.

17 A Yes.

18 Q So let's do that, then.

19 Plaintiff's Exhibit 8 bears the  
20 Bate Stamp series -- I guess to be clear,  
21 and I just want to make sure before I move  
22 on a topic, at any point did you recall  
23 Dr. Yang raising any questions or concerns  
24 about getting Mr. Figueroa off of Rikers  
25 Island because he was a disruptive inmate?



1 R. MACDONALD

2 A No.

3 Q Do you recall Dr. Yang inquiring  
4 or I guess trying to figure out or getting  
5 him declared unfit so that he could be moved  
6 off the island?

7 MS. CANFIELD: Objection to  
8 form. You can answer.

9 A No.

10 Q Do you recall anything having to  
11 do with Jose Gonzalez being the EMT killer?

12 A No.

13 Q So let's just go -- we'll get to  
14 that. Now, this will be marked at  
15 Plaintiff's Exhibit 8.

16 (Whereupon, Email (NYC\_75-76)  
17 was marked as Plaintiff's  
18 Exhibit 8 for identification as  
19 of this date.)

20 Q And Plaintiff's Exhibit 8 bears  
21 the Bate Stamp series NYC75 to NYC76, right?  
22 Let me go down to the bottom of the exhibit.

23 MS. CANFIELD: And, again,  
24 this was sent to me?

25 MS. HAGAN: This was in

1 R. MACDONALD

2 October.

3 MS. CANFIELD: Thank you.

4 Q It's from Patrick Alberts to  
5 Dr. Yang. Who is Patrick Alberts?

6 A Patrick Alberts was, I believe in  
7 charge of risk management and some aspects  
8 of our policies for CHS.

9 Q And she says, "Judge Torres wants  
10 to hold us in contempt." And that's what  
11 Mr. Alberts says to Dr. Yang. Just spoke to  
12 Aaron again --

13 A I'm sorry. Can you scroll down to  
14 show me that.

15 MS. CANFIELD: Just let the  
16 witness read the entire email thread  
17 if you'd like him to comment on it.

18 MS. HAGAN: Sure.

19 Q Let's start from the very  
20 beginning. You see this, right; from  
21 Dr. Yang to Mr. Alberts, right?

22 A Yes.

23 Q It says, "Our courts are using  
24 boilerplate language requesting records."  
25 That's the question that she posted to him

1 R. MACDONALD

2 on February 1st, 2018, right?

3 A Yes.

4 Q Then Mr. Alberts' response, "I  
5 spoke with Erin at MOCJ yesterday about this  
6 judge again and asked Lucy to provide the  
7 correct language for subpoena, which she  
8 did. He may have the misperception that his  
9 730 orders entitle him to substance use  
10 information, which they do not. Erin  
11 assured me that she would speak with him and  
12 report back. I'm not sure if there is some  
13 kind of miscommunication or recalcitrance at  
14 this point, but he seems to be refusing our  
15 boilerplate language. I didn't know about  
16 the contempt threat."

17 Now, who is Erin?

18 A I don't know. Apparently someone  
19 at the mayor's office of criminal justice,  
20 but I don't know specifically.

21 Q Who is Lucy?

22 A Lucy is another attorney that  
23 worked, I think, in Health and Hospitals.

24 Q Did you have any part in the  
25 boilerplate language regarding the 730

1 R. MACDONALD

2 orders?

3 A No.

4 Q So you didn't confer with anyone,  
5 you didn't review it or anything for  
6 substance?

7 MS. CANFIELD: Objection to  
8 form. You can answer.

9 A No.

10 Q So now we're going to move up.

11 Now, Mr. Alberts is an attorney  
12 advising staff in his legal capacity; would  
13 that be accurate?

14 MS. CANFIELD: Objection to  
15 form. You can answer.

16 A I'm not sure about that. He was  
17 an administrator. I don't think he was  
18 acting as an attorney.

19 Q But he is an attorney, though?

20 A He is trained as an attorney, yes.

21 Q So, then, Mr. Alberts responds to  
22 Dr. Yang, "Just spoke with Erin again. She  
23 said Judge Torres is fine using the  
24 boilerplate subpoena, and understands  
25 limitations. However, he said that Dr. Kaye

1 R. MACDONALD

2 is refusing to perform the examination until

3 she receives the entire unredacted record.

4 It says this problem is entirely unique to

5 her, at least with respect to Judge Torres.

6 On one hand I'm glad that the judge isn't

7 the problem, but how do you think we should

8 approach the provider, if at all. In this

9 case she's asking for something she legally

10 can't have. I don't think it would be

11 appropriate for us to approach the patient

12 and obtain an authorization, and it's

13 doubtful his attorney will either."

14 Now, how is Mr. Patrick or telling

15 Dr. Yang that Dr. Kaye is not legally

16 entitled to unredacted medical records?

17 MS. CANFIELD: Objection to

18 form. You can answer if you're

19 able.

20 A As I was discussing previously, we

21 had sought to reduce any administrative

22 barrier to receiving a full record, as far

23 as what's legal, and I think Patrick Alberts

24 was looking into that in conjunction with, I

25 don't know, counsel from H&H or from the

1 R. MACDONALD

2 City. And had clarified the legalities of  
3 that under New York State law, to require  
4 authorization from the patient to allow for  
5 the release of this information, even in the  
6 circumstance. That's my understanding.

7 Q Who redacted the medical --

8 A What he's referring to.

9 Q So who would have been responsible  
10 for redacting the inmates' medical records?

11 A If they are from correctional  
12 health services, then it would be our  
13 medical record staff.

14 Q Who manages the medical records  
15 staff?

16 A At the time, it was probably  
17 Patrick Alberts.

18 Q Who did Patrick Alberts report to?

19 A Patsy Yang.

20 Q Directly?

21 A Yeah.

22 Q What was Mr. Alberts' title  
23 exactly?

24 A I don't remember his exact title.

25 Q But he reported to Dr. Yang?

1 R. MACDONALD

2 A Yes.

3 Q So then Dr. Yang responds, "So I  
4 went down Kaye's rabbit hole, which included  
5 MOCJ thinking the judge was the problem.  
6 Not so. If she stays, we need to deal with  
7 this. Need your FPECC Uber clinician on  
8 board." Right?

9 Now, did it come to your attention  
10 at some point that Judge Torres was  
11 threatening to hold you in content?

12 MS. CANFIELD: Objection to  
13 form. You can answer.

14 A No. I don't think I was aware of  
15 that.

16 Q So no one ever told you this at  
17 any point?

18 A Not that I recall.

19 Q And, then, what does Dr. Yang mean  
20 when she says, "If she stays, we need to  
21 deal with this"; what is she talking about,  
22 Dr. Yang?

23 A Well, I would be speculating, but  
24 I think what she's talking about is this  
25 level of delay and complexity with the

1 R. MACDONALD

2 evaluation that's been introduced by the  
3 demand for substance use information, which  
4 was not standard among other examiners in  
5 FPECC, nor was standard within the field, as  
6 I understand it.

7 Q Now, is Dr. Kaye at fault for CHS  
8 being in contempt to Judge Moore's order for  
9 unredacted medical records?

10 MS. CANFIELD: Objection to  
11 form. You can answer if you're  
12 able.

13 A Of course not. Nor were we in  
14 contempt.

15 Q Would you say that Mr. Alberts has  
16 more knowledge than Judge Moore regarding  
17 the medical records?

18 MS. CANFIELD: Objection to  
19 form. You can answer if you're  
20 able.

21 A Yes. I think Mr. Alberts had  
22 investigated this specific question with our  
23 H&H and/or the City's law department, to  
24 understand what are the legalities related  
25 to the release of this information. So,



1 R. MACDONALD

2 yeah, he was very expert on this question.

3 Q So you thought he was more  
4 knowledgeable than Judge Moore?

5 MS. CANFIELD: Objection to  
6 form.

7 A I have no idea who Judge Moore is.  
8 I know that Patrick Alberts is extremely  
9 expert on this question because he had been  
10 investigating it with the help of attorneys  
11 from H&H and the City.

12 Q Who is this FPECC Uber clinician  
13 that Dr. Yang is referencing or hoping to  
14 have on board?

15 A I think that she was referencing  
16 that we needed to hire a director for the  
17 clinics.

18 Q And that would have been Dr. Jain?

19 A It did turn out to be Dr. Jain. I  
20 think she was referring to that position.

21 Q Was Dr. Kaye ever approached about  
22 that position?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A I don't know.

1 R. MACDONALD

2 Q Do you know why she was approached  
3 or wasn't approached?

4 MS. CANFIELD: Objection to  
5 form. Assumes facts. You can  
6 answer.

7 A I don't know that she wasn't  
8 approached. I think, as I -- I don't know  
9 exactly what the time course was. She may  
10 have, as we discussed previously, indicated  
11 her unwillingness to come out of the union.  
12 That's clearly a managerial position.

13 She may have at that point  
14 demonstrated that she was resistant to the  
15 entire project of CHS consolidating and  
16 taking these clinics in the interest of  
17 making things more efficient, in which case  
18 she would not have been a good candidate for  
19 this position.

20 Q So you're saying that Dr. Kaye was  
21 being resistant to the changes being made to  
22 make the court clinics more efficient; is  
23 that your position?

24 A Yes.

25 MS. CANFIELD: Objection to

1 R. MACDONALD

2 form.

3 Q And you said yes, right?

4 A Yes. That's the impression that I  
5 gathered from managing two separate people  
6 with expertise in this area who were in  
7 charge of these clinics.

8 Q Dr. Kaye worked there longer than  
9 the two people that you're referencing. She  
10 worked in this capacity at the clinic for 20  
11 years. Now, Dr. Jain -- is that one of the  
12 people you're referencing?

13 A Yes.

14 Q He hadn't even been hired yet.  
15 This is February 2018. Dr. Yang is looking  
16 for this Uber director. How is it that he  
17 has more expertise than Dr. Kaye?

18 MS. CANFIELD: Objection. You  
19 can answer if you're able to  
20 understand the question.

21 A That's not what I'm contending.  
22 I'm contending that Dr. Ford certainly may  
23 have that assessment by then. And that it's  
24 not unusual in projects like these, that  
25 people that have been there the longest are

1 R. MACDONALD

2 the most resistant to change.

3 So a person's tenure in the  
4 position doesn't mean that they are going to  
5 be a willing participant in the process to  
6 improve.

7 Q Did Dr. Kaye say she was resistant  
8 to change?

9 A No. Again, that's my impression  
10 from having managed two separate  
11 professionals who I worked with closely and  
12 trust, who struggled to manage her and --

13 Q Did you ever speak to Dr. Kaye  
14 yourself?

15 MS. CANFIELD: Objection.

16 Asked and answered. You can answer  
17 again.

18 A No. I had very little interaction  
19 with Dr. Kaye directly.

20 Q But you had these two managers who  
21 were struggling to manage her, that were  
22 coming to you, I guess fairly periodically  
23 about her. Why didn't you take it upon  
24 yourself to speak to her yourself?

25 MS. CANFIELD: Objection to

1 R. MACDONALD

2 form. You can answer.

3 A I think there are a couple of  
4 layers of management in between. There were  
5 a lot of people dealing with a lot of the  
6 different issues that she was raising. They  
7 tended to be, frankly, outside my area of  
8 expertise, as you've established.

9 It wasn't disputes about the  
10 content of clinical evaluations, it was  
11 disputes around HR, around administrative  
12 issues, around compensation. And I made  
13 sure that her direct supervisors had the  
14 appropriate support from the leadership of  
15 CHS, whose purview was those areas.

16 Q Now, did you engage Dr. Bhatti  
17 yourself?

18 A I did, yes.

19 Q Why?

20 A I was in a different role at the  
21 time. It was a different relationship.

22 Q So you were in a different role,  
23 and that was in 2000, what, 16?

24 A Yes.

25 Q So you weren't chief medical

1 R. MACDONALD

2 officer, you were chief of what?

3 A Chief of medicine.

4 Q Medicine. Who did Dr. Bati report  
5 to?

6 A Probably one of the psych medical  
7 directors.

8 Q Who did the psych medical director  
9 report to?

10 A Probably the assistant chief of  
11 medicine.

12 Q Who was that?

13 A Would have been Louis Cintron or  
14 Zach Rosner.

15 Q So that's two people removed from  
16 you at least, right? Dr. Bati, right?

17 A Yes.

18 Q And Dr. Kaye is at least two  
19 people removed from you as well here. She  
20 was -- there was Dr. Jain that she reported  
21 directly to; is that right?

22 A Yeah. Dr. Jain reported to  
23 Dr. Ford who reported to me.

24 Q Right. Who reported to you?

25 A Yeah. That would be three layers

1 R. MACDONALD

2 in that situation.

3 Q Well, Dr. Jain, Dr. Ford and then  
4 you, and Dr. Bati would be three layers; am  
5 I right?

6 A Psych medical director, assistant  
7 chief, then me, yes.

8 Q So Dr. Bati was further removed  
9 from you and you could directly intervene,  
10 but Dr. Kaye was only two people removed  
11 from and you did not; is that right?

12 MS. CANFIELD: Objection to  
13 form. You can answer.

14 A So I would just say they were  
15 equally far removed in terms of the  
16 organizational chart. That's not the only  
17 determining factor. Every situation is  
18 different. It's not to say that any  
19 personnel issue that included a person two  
20 layers below me that I would become involved  
21 in, simply because I was involved in that  
22 issue.

23 Q But you were very much, I guess,  
24 engaged in this particular issue with  
25 Dr. Kaye; am I right?

1 R. MACDONALD

2 MS. CANFIELD: Objection to

3 form. You can answer.

4 A I was not that much engaged in it  
5 because, again, the content was so much the  
6 purview of the CHS leadership that dealt  
7 with HR, that dealt with administrative  
8 issues, that dealt with legal issues, that  
9 dealt with compensation.

10 So I was not so much engaged with  
11 it. And, as you know, Dr. Kaye was writing  
12 directly to my supervisor, Dr. Patsy Yang  
13 who was very involved. So I was not so much  
14 engaged with it, really through just a  
15 natural division of labor where different  
16 members of the team handled different  
17 issues.

18 Q Well, wasn't Dr. Bati's issues  
19 revolving around administrative issues as  
20 well?

21 MS. CANFIELD: Objection to

22 form. You can answer.

23 A Yes. In that particular instance  
24 I primarily became responsible for it. So,  
25 again, division of labor and different



1 R. MACDONALD

2 circumstances is part of how management is  
3 done.

4 Q So here you have an email from  
5 Dr. Ford saying, "Does Jeremy know about  
6 this absolutely ridiculous demand on Dr.  
7 Kaye's part. Standard practice in forensic  
8 evals is to use whatever records we have,  
9 form an opinion and note any limitation in  
10 the formulation.

11 Now, did you do any independent  
12 research to see if Dr. Ford was actually  
13 right in her assertion here?

14 A No.

15 Q Did you reference the APPL  
16 guidelines regarding medical records?

17 A No.

18 Q Or the ABA, for that matter?

19 A No.

20 Q "In any case, Kaye has been a  
21 problem for a long time and we will manager  
22 her out." We talked about this earlier,  
23 right?

24 A Um-hmm. Yes.

25 Q Now, what was your reaction when

1 R. MACDONALD

2 you saw that, Dr. MacDonald?

3 A I wasn't on this email.

4 Q Okay. "Whenever I hear that Uber  
5 director posted will send around like link  
6 to forensic psych world. Am sending first  
7 candidate Ross's way for second opinion as  
8 well."

9 You're Ross, right?

10 A Correct.

11 Q Were you the person who ultimately  
12 supported her decision to hire Dr. Jain?

13 A I interviewed several candidates  
14 for that position and we talked about their  
15 relative strengths and weaknesses, but it  
16 was ultimately her decision.

17 Q But then here you are now on the  
18 email. Maybe you recognize this now.  
19 Dr. Yang is emailing Dr. Ford and yourself.

20 Maybe the last 20 will do it.  
21 That was some performance. Doubt Jeremy  
22 knows given that I understand in his  
23 removed. I only found this by shallow  
24 digging -- dragged me in MOCJ that word had  
25 it that the judge might hold the city in

1 R. MACDONALD

2 contempt, and it turns out it is Kaye's own  
3 cyclone that has sucked in detritus."

4 Do you understand any of this?

5 MS. CANFIELD: Objection to  
6 form. You can answer.

7 A I can speculate about what it  
8 means.

9 Q Let's break it down, then.

10 "Maybe the last 20 will do it."  
11 What does she mean by that? What does Dr.  
12 Yang mean by that?

13 A I don't know.

14 Q Was it the last 20,000 that was  
15 really what Dr. Kaye was entitled to  
16 regarding her retention bonus?

17 MS. CANFIELD: Objection to  
18 form.

19 A Possibly.

20 MS. CANFIELD: Speculation.

21 A Possibly. I don't know.

22 Q "That was some performance." What  
23 the performance is Dr. Yang talking about?

24 A I don't know.

25 Q "Doubt Jeremy knows given what I

1 R. MACDONALD

2 understand is his remove."

3 What does she mean by "remove"?

4 MS. CANFIELD: Objection to  
5 form. You can answer if you're  
6 able.

7 A I think she's referring to an  
8 understanding that these clinics were not  
9 very closely watched or managed by their  
10 parent institutions. And, therefore, that  
11 there wouldn't be that level of detailed  
12 understanding.

13 Q And just for the purposes of the  
14 record, Jeremy is Dr. Jeremy Collin, right?

15 A I believe so, yes.

16 Q Up until the transition, didn't  
17 Dr. Kaye report to Dr. Collin?

18 A I know Dr. Collin was in charge of  
19 the forensic service, so that would make  
20 sense.

21 Q Right. So at some point was  
22 Dr. Collin removed from being in charge of  
23 the forensic service?

24 A I think that may have happened  
25 recently.

1 R. MACDONALD

2 Q Well, as far as this particular  
3 email is concerned, February 1st, 2018,  
4 right, the Bronx court clinic, first you  
5 hired the Uber director, Dr. Jain. And  
6 would it be fair to say you hired him in  
7 April of 2018?

8 MS. CANFIELD: Objection to  
9 form. You can answer. The record  
10 speaks for itself.

11 A That sounds reasonable.

12 Q So in April 2018, you hired  
13 Dr. Jain. And what happens to Dr. Colin?

14 A Dr. Colin worked for Bellevue  
15 Hospital, he didn't work for CHS.

16 Q Was he Dr. Kaye's supervisor once  
17 Dr. Jain got on board?

18 A No. He wasn't her supervisor once  
19 the clinic came to CHS.

20 Q Right. And when did that happen?

21 A Well, as we discussed previously,  
22 you've represented to me that it was  
23 July 1st, 2018, right?

24 Q But Dr. Jain was hired in  
25 April 2018. So you're saying that between

1 R. MACDONALD

2 April and July 2018, he wasn't her  
3 supervisor?

4 A I don't know. I was, again, just  
5 basing that on the date you established for  
6 the Bronx clinic coming to CHS. Which in  
7 the previous questions we said was July 1st,  
8 but maybe I'm misunderstanding that. It  
9 happened sooner.

10 Q Then she goes on and she says,  
11 "The judge might hold the City in contempt,"  
12 right?

13 And earlier you disagreed that the  
14 City was going to be held in contempt for  
15 not producing unredacted records.

16 You saw that, right?

17 MS. CANFIELD: Objection to  
18 form. You can answer.

19 A I think that I said we were not,  
20 as far as I know. And here she says they  
21 might.

22 Q Right. And she says, "It's Kaye's  
23 own cyclone." What did she mean by that?

24 MS. CANFIELD: Objection to  
25 form. Answer if you're able.

1 R. MACDONALD

2 A I mean, I would just be  
3 speculating, but I think she's referring to  
4 a pattern of creating conflict and obstacles  
5 to getting things done.

6 Q Now, didn't Dr. Colin have  
7 concerns about using redacted medical  
8 records?

9 A I don't know.

10 Q Didn't Dr. Winkler express  
11 concerns about using redacted medical  
12 records?

13 A I don't know.

14 Q And didn't even Dr. Circic express  
15 concerns about using redacted medical  
16 records?

17 A I don't know.

18 Q Why was it that Dr. Kaye was  
19 singled out when she expressed concerns  
20 about using redacted medical records, no one  
21 else was?

22 MS. CANFIELD: Objection to  
23 form. You can answer.

24 A I will just be speculating.

25 Q But you're oddly identifying

1 R. MACDONALD

2 Dr. Kaye as someone who was resisting. Were  
3 there any other staff members that you  
4 recall that were resistant to using redacted  
5 medical records besides Dr. Kaye?

6 A No. I'm not aware of anyone else  
7 making an issue of it. And I think that  
8 this is an example where it became such an  
9 issue that it rises to the level of the  
10 judge and he's feeling like he has to hold  
11 the City in contempt, and it's making a lot  
12 of chaos and slowing down the process. I  
13 don't know of any other staff who were  
14 engaging around that issue in that way.

15 Q In what way exactly; explain?

16 A In a way that creates so much  
17 conflict.

18 Q But how was Dr. Kaye creating so  
19 much conflict? What exactly did she do?

20 A If you want to raise the email  
21 again, I agree with Dr. Ford's assessment.

22 Q Well, Dr. Ford is just saying that  
23 she needed to be managed out?

24 MS. CANFIELD: Objection to  
25 form. You can answer.



1 R. MACDONALD

2 A No. Dr. Ford had material  
3 disagreement with her opinion on the matter.

4 Q I'm going to show you what's going  
5 to be --

6 MS. CANFIELD: Do you want to  
7 pull it back up? Do you want to see  
8 it again?

9 Q I'm going to show him a different  
10 exhibit, because this might help him out.

11 This is going to be marked as  
12 Plaintiff's Exhibit 9.

13 (Whereupon, Email (NYC\_118-119)  
14 was marked as Plaintiff's  
15 Exhibit 9 for identification as  
16 of this date.)

17 Q Plaintiff's Exhibit 9 bears the  
18 Bate Stamp series NYC118 through 119. And  
19 I'm going to scroll to the bottom of it.

20 Now, in 118 to 119, you email  
21 Elizabeth Moreira. Who is that?

22 A That was an administrator in the  
23 Bellevue forensic clinic.

24 Q And you say, "Hi, Liz, can you  
25 share with me the records you received for

1 R. MACDONALD

2 the cases that Kaye could not complete.

3 Thanks, Ross."

4 You see that, right?

5 A Um-hmm.

6 Q Now, isn't this outside of your  
7 area of expertise as far as the record  
8 themselves and this whole issue?

9 MS. CANFIELD: Objection to  
10 form. You can answer.

11 A No. I don't think so. Again, I  
12 was engaged, as I said, our desire was to  
13 have the most complete records available to  
14 the examiners. Again, the whole point of  
15 this endeavor was to make things as  
16 efficient and as effective as possible.

17 So the question was raised whether  
18 there was some inappropriate or overly  
19 aggressive redaction going on by our medical  
20 records team. And that's why I was  
21 interested in looking at these records, just  
22 to make sure that they were being redacted  
23 appropriately.

24 Q And then Ms. Moreira responds to  
25 you, "It would have to be requested from the

1 R. MACDONALD

2 clinic itself. I can copy Melissa," I guess

3 Dr. Kaye, "and the ACM, if you'd like."

4 Now, who's the ACM?

5 A Probably referring to assistant  
6 coordinating manager, some administrator in  
7 the clinic.

8 Q Who would that have been?

9 A I don't know.

10 Q So then you say back to  
11 Ms. Moreira, "Yes, please," right?

12 And then at this point, Ms.  
13 Moreira emails you, Dr. Kaye and  
14 Lacreia Persaud. So I'm assuming the ACM  
15 must have been Ms. Persaud.

16 Would that be accurate?

17 A It would make sense, yeah.

18 Q So then Ms. Moreira says, "No  
19 problem. Do you have a defense's name for  
20 the case in question? I have copied  
21 Dr. Kaye and Lacreia Persaud in this email.  
22 To some extent Dr. Ross MacDonald of CHS is  
23 trying to work on the redaction issue and is  
24 requesting to see the versions of records we  
25 have received for outstanding cases in which

1 R. MACDONALD

2 were redacted and, therefore, left an  
3 opinion unrendered."

4 You see this, right?

5 A Yes.

6 Q Do you recall what Dr. Kaye said  
7 to you when you made the request?

8 A No. I don't.

9 Q Do you recall Dr. Kaye telling you  
10 that she could not provide --

11 A I'm sorry. Can I interrupt for  
12 one second.

13 Q Yes, sir?

14 A I just have to stop for one  
15 second.

16 (Whereupon, a recess was taken  
17 from 2:40 p.m. to 2:41 p.m.)

18 Q I'm going to ask you, is there  
19 someone else in the room?

20 A No. Someone came to my door.  
21 That's why I stopped the proceedings.

22 Q Okay. There's no one else, like  
23 there's no other legal counsel in the room?

24 A No. There's nobody in the room.  
25 Someone came to my door. That's why I

1 R. MACDONALD

2 stopped the proceeding.

3 Q I just had to ask because, you  
4 know, if there is someone, we are entitled  
5 to know.

6 A Absolutely. Of course. That's  
7 why I stopped.

8 Q Fair enough.

9 MS. HAGAN: Now, are there any  
10 other -- there's no one else on the  
11 zoom from defendants, right?

12 A Not that I'm aware of.

13 MS. CANFIELD: No.

14 MS. HAGAN: Okay. Just making  
15 sure.

16 Q So back to the question. At any  
17 point, did Dr. Kaye tell you that she could  
18 not produce the records because she didn't  
19 have a court order to you?

20 A I don't remember how that turned  
21 out, actually.

22 Q So you don't remember if you  
23 received the records at all from Dr. Kaye?

24 A I don't remember receiving any  
25 records.

1 R. MACDONALD

2 Q And you don't remember if Dr. Kaye  
3 told you she could not produce them because  
4 she had not received an order?

5 A I don't remember.

6 Q How did you resolve the issue?

7 A I think I probably left it at  
8 that, if I wasn't able to get the records.  
9 I was just trying to think of how I could be  
10 of assistance to try to troubleshoot the  
11 issue.

12 Q When you didn't receive the  
13 records, you just left them alone all  
14 together?

15 A Well, again, I think it was an  
16 ongoing conversation about the legalities of  
17 the redaction. And it may have dropped my  
18 idea to try to help and make sure that we  
19 were redacting appropriately. I was just  
20 trying to troubleshoot the problem.

21 Q Did your opinion of Dr. Kaye  
22 change after this situation or this  
23 incident?

24 A No.

25 MS. CANFIELD: Objection to

1 R. MACDONALD

2 form.

3 Q You said no?

4 A (No verbal response given.)

5 Q Now, I'm going to ask you some  
6 questions about the -- I'm going to show you  
7 some instances where we discussed where  
8 other people received redacted medical  
9 records regarding the situation with Judge  
10 Torres and Judge Moore. Okay?

11 A Okay.

12 Q And this will be Plaintiff's  
13 Exhibit 10.

14 (Whereupon, Email  
15 (NYC\_1914-1915) was marked as  
16 Plaintiff's Exhibit 10 for  
17 identification as of this date.)

18 Q And it bears the Bate Stamp series  
19 NYC1915 -- well, actually, sequentially,  
20 1914 and 1915. And I'm going to show you  
21 the bottom. The first email is from Wanda  
22 Roberts. You see that, right?

23 A Yes.

24 Q And it's to Lacrechia Persaud. And  
25 she says, "Good afternoon, Lacrechia. Please

1 R. MACDONALD

2 review the attached medical record for --  
3 this is part one of the medical record,  
4 thank you. And she's the director of  
5 medical records. Do you know her to act in  
6 this capacity, Ms. Roberts?

7 A Yes.

8 Q So then going up, there's the  
9 email from Ms. Persaud, and the medical  
10 records, and it's to Dr. Winkler.

11 You see that, right?

12 A Yes.

13 Q And then Dr. Winkler responds,  
14 "Hi, Lacrechia. Please advise Ms. Roberts  
15 that these records are useless. They are  
16 redacted and do not include an attestation  
17 certification which we need for the court.  
18 Please advise her that we require  
19 unredacted, certified records as soon as  
20 possible since the court is questioning the  
21 delay in this case. You see that, right?

22 A Yes.

23 Q And this is from Dr. Winkler not  
24 Dr. Kaye. You see this, right?

25 A Yes.



1 R. MACDONALD

2 Q And then Dr. Kaye says, "Hello,  
3 Ms. Laird (phonetic). We are still  
4 receiving redacted medical records from CHS  
5 despite judicial orders for unredacted  
6 records. This is holding up many cases.  
7 Can you please forward this to Judge  
8 Torres's office. Thank you." Right?

9 A Yes.

10 Q So how is it that Dr. Kaye is  
11 being blamed for causing delays, when it  
12 appears that Judge Torres is responsible as  
13 well as the production of redacted records?

14 MS. CANFIELD: Objection to  
15 form. You can answer.

16 A I can only say that this is one of  
17 the problems that we were trying to  
18 troubleshoot. And our goal has always been  
19 to work together to troubleshoot any barrier  
20 to efficiently doing the evaluations.  
21 That's why we took over the clinics. There  
22 is no other motivation that we could have.

23 The results of what we were  
24 advised about the legalities and a necessity  
25 for redaction were maybe not favorable to

1 R. MACDONALD

2 Dr. Kaye or Dr. Winkler or to certain  
3 judges, but we were trying to troubleshoot  
4 that problem in good faith.

5 Q Why is it that Dr. Kaye was  
6 determined to have caused the cyclone and  
7 not Dr. Winkler; he's involved in this  
8 particular incident as well?

9 MS. CANFIELD: Objection to  
10 form. You can answer.

11 A Again, I'm not going to speak to  
12 the impression that was left in another  
13 email chain that I wasn't apart of it. It's  
14 becoming so speculative.

15 I think that there were many areas  
16 where the impression was that this was not a  
17 good faith effort on behalf of Dr. Kaye to  
18 try to troubleshoot these issues with us.  
19 Rather, it was trying to point fingers, and  
20 that the situation escalated when she was  
21 involved in it in ways that it didn't with  
22 other examiners.

23 Q But you can't really say that it  
24 was attributed to her or Dr. Winkler, they  
25 are both involved here. You see that --

1 R. MACDONALD

2 MS. CANFIELD: Objection to  
3 form. You can answer.

4 Q Both Dr. Winkler and Dr. Kaye are  
5 on the thread regarding the Judge Torres,  
6 Judge Moore redacted medical record  
7 incident. However, Dr. Kaye is being called  
8 the cyclone and Dr. Winkler isn't. Why is  
9 that?

10 MS. CANFIELD: Objection to  
11 form. Assumes facts. You can  
12 answer.

13 A I mean, when you pull out an  
14 isolated email chain like that --

15 Q But there are two emails.

16 A Okay. But it's happening in the  
17 context of people working with all of these  
18 players every day, trying to troubleshoot  
19 these issues.

20 So I can't tell you based on the  
21 records that you're showing me why the  
22 perception of Dr. Kaye's supervisor and  
23 Dr. Ford and others, was that she was  
24 particularly recalcitrant on this issue and  
25 would not work with CHS or others to try to

1 R. MACDONALD

2 get to a better solution.

3 Q Dr. Yang --

4 A I can't understand --

5 MS. CANFIELD: Let the witness  
6 finish his response, please.

7 Q Dr. Yang was further removed from  
8 the process than you; is that right?

9 MS. CANFIELD: Objection to  
10 form. You can answer if you're  
11 able.

12 A No. Not necessarily. For the  
13 reasons that I explained. She was further  
14 removed in the organizational chart when she  
15 took interest in this matter and --

16 Q Why?

17 A Because, as I explained, the  
18 primary issues that were being raised were  
19 in the areas of the legal concerns, the  
20 compensation, the HR, all of those matters.

21 Q But she hadn't -- Dr. Kaye hadn't  
22 complained about compensation issues in  
23 February of 2018. She was simply saying  
24 that she could not work with redacted  
25 medical records at that time. And this

1 R. MACDONALD

2 email, Dr. Yang refers to Dr. Kaye, they  
3 cyclone, and then she uses the term  
4 detritus. Why she only using those  
5 terminologies in reference to Dr. Kaye and  
6 not Dr. Winkler, when both of them expressed  
7 concern about using redacted medical  
8 records?

9 MS. CANFIELD: I'm going to  
10 the object to the factual colloquy  
11 or the performed factual colloquy  
12 that followed that question or  
13 proceeded that question, sorry, and  
14 object to the question. You can  
15 answer if you're able to.

16 A I don't know.

17 Q You don't know. There's no real  
18 reason that there's a difference, as far as  
19 you can see, because you weren't involved  
20 directly you say, between why Dr. Yang is  
21 referring to Dr. Kaye as a cyclone, and  
22 she's not referring to Dr. Winkler as one?

23 MS. CANFIELD: Objection to  
24 form. Objection. You can answer if  
25 you're able.

1 R. MACDONALD

2 A I don't know.

3 Q Now I'm going to show you what's  
4 going to be marked as Plaintiff's Exhibit  
5 11. Plaintiff's Exhibit 11 bears the Bate  
6 Stamp series NYC288.

7 (Whereupon, Email (NYC\_288) was  
8 marked as Plaintiff's Exhibit 11  
9 for identification as of this  
10 date.)

11 MS. CANFIELD: Just 288?

12 MS. HAGAN: Yes.

13 MS. CANFIELD: Was this sent  
14 in October or November?

15 MS. HAGAN: This is  
16 June 21, 2018.

17 MS. CANFIELD: No. I'm saying  
18 when did you send this document to  
19 me?

20 MS. HAGAN: In October.

21 MS. CANFIELD: October.

22 Q It's an email from Dr. Jain to  
23 Dr. Ford. And the subject is Jonathan. I'm  
24 assuming Jonathan is Jonathan Wangel, right?  
25 "I let Melissa know that I'll need

1 R. MACDONALD

2 to tell Jonathan at least and she was  
3 understanding that I need to report to  
4 whomever from my end no problem. She's  
5 hopeful and feels more optimistic that this  
6 will all lead to a positive outcome. Just  
7 passing along to you. Thanks, Beech,"  
8 right?

9 A Yes.

10 Q Then Dr. Ford is emailing you and  
11 Dr. Barbara Rioja about Dr. Kaye's  
12 complaint. And she says, "FYI, nothing to  
13 do. Melissa is filing a EEO complaint with  
14 respect to pay differential that I think  
15 spans multiple years at Bellevue. Jonathan  
16 will be made aware." Right? And this is  
17 June 21, 2018, you see this, right.

18 A Yes.

19 Q Now, why is Dr. Barber Rioja on  
20 this email?

21 MS. CANFIELD: Objection to  
22 form. By the way, I don't have this  
23 document. Go ahead. You can  
24 answer.

25 A You're asking why Dr. Barbara

1 R. MACDONALD

2 Rioja is on this email that was written by  
3 Dr. Ford?

4 Q Well, you're on here. And how is  
5 Dr -- what is Dr. Barbara Reoha's  
6 relationship to Dr. Kaye?

7 MS. CANFIELD: Objection to  
8 form. You can answer.

9 A I think this was probably a time  
10 when Dr. Barbara Reoha's oversight of the  
11 clinic was still a possibility. And we had  
12 not settled on the organizational structure  
13 a hundred percent yet.

14 MS. HAGAN: For purpose of the  
15 record, this is defendant's  
16 production NYC288. So even though I  
17 did produce it in October, in  
18 October 2021, this is certainly one  
19 of your emails, defendant's emails.

20 MS. CANFIELD: I understand  
21 that. It did not come to me in  
22 October, and I understand that, it's  
23 consistent with magistrate Judge  
24 Cott (phonetic) which provide the  
25 exhibits either contemporaneous with



1 R. MACDONALD

2 the deposition or prior to and I  
3 don't have it.

4 MS. HAGAN: Why don't you go  
5 check your email, 'cause it's there.

6 MS. CANFIELD: I have been  
7 check. It's actually three  
8 documents I don't have, but we can  
9 discuss that at the end of the  
10 deposition.

11 Q So, Dr. MacDonald, you're saying  
12 that you were debating whether or not you  
13 were going to have Dr. Barbara Rioja act in  
14 a managerial capacity over the clinics; am I  
15 right?

16 A That's a possible explanation for  
17 why she was on this email. I didn't send  
18 this email so I don't know the answer to  
19 your question.

20 Q So, ultimately, what -- how it was  
21 resolved with Dr. Barbara Rioja; was she  
22 ultimately put in a managerial structure  
23 over the clinics while Dr. Kaye was there?

24 A Not at that time.

25 Q When did she become a managerial

1 R. MACDONALD

2 over the clinics?

3 MS. CANFIELD: Objection to

4 form. You can answer.

5 A I don't know exactly, but I think  
6 it was after Dr. Jain's departure.

7 Q Now, clearly you're on notice  
8 about Dr. Kaye's EEO complaint, right, about  
9 the pay differential here?

10 A Yes.

11 Q And this is on June 21, 2018; is  
12 that right?

13 A Yes.

14 Q And did you speak to Mr. Wangel  
15 about Dr. Kaye's complaint at that point?

16 A No. This email chain reflects an  
17 FYI to me that these staff are taking  
18 complaints seriously and bringing it through  
19 the appropriate channels.

20 Q But you're their supervisor; am I  
21 right?

22 A Yes.

23 Q So as their supervisor, what did  
24 you do to followup to ensure that they  
25 actually took the complaint seriously?

1 R. MACDONALD

2 A Again, I have email documentation  
3 that you're showing to me attesting that  
4 they will. And I do believe that they did.  
5 And I trust my supervisors to do the things  
6 that they tell me they are going to do.

7 Q How do you know that they did what  
8 they represented on this email?

9 MS. CANFIELD: Objection to  
10 form. You can answer.

11 A I believe that they did it.

12 Q You see this, "Jonathan will be  
13 made aware," right?

14 A Yes.

15 Q Do you know that she made Jonathan  
16 aware?

17 A I know that Jonathan was aware  
18 subsequent to this.

19 Q And you don't -- was Jonathan the  
20 EEO officer for H&H at that time?

21 A No.

22 Q Was he the EEO officer for CHS at  
23 that time?

24 A I don't know.

25 Q Why didn't you ensure that

1 R. MACDONALD

2 Dr. Ford or Dr. Jain reported this to the  
3 EEO office?

4 MS. CANFIELD: Objection to  
5 form. Assumes facts. You can  
6 answer.

7 A Just as I said with my own  
8 response, to make sure that the exact nature  
9 of a complaint like this is reported  
10 appropriately, I would recommend that they  
11 consult with HR. And Jonathan is HR.

12 Q But you didn't know who the EEO  
13 officer was earlier; am I right?

14 MS. CANFIELD: Objection to  
15 form. You can answer again.

16 A Yes.

17 Q So you have no idea if they  
18 reported it to the EEO officer or not  
19 because you don't know who the EEO officer  
20 is, right?

21 MS. CANFIELD: Objection.

22 Again, assumes facts, that it should  
23 be reported to the EEO officer, but  
24 you can answer.

25 A Again, I would advise them to

1 R. MACDONALD

2 discuss it with Jonathan to get his advice  
3 about how exactly it should be reported.

4 Q Wasn't it your testimony earlier  
5 today that an EEO complaint should be  
6 reported to the EEO officer?

7 MS. CANFIELD: Objection to  
8 form.

9 A It was. I think that there's  
10 complexity here because, as you represented  
11 to me, Dr. Kaye didn't work for CHS at this  
12 time, or the clinic was in the process of  
13 transition and the complaints being raised  
14 were from an entity other than CHS at that  
15 point.

16 MS. CANFIELD: Yes. Like the  
17 EEOC.

18 A So that's a complex situation that  
19 I will seek guidance from HR leadership on.  
20 Which is what my staff told me they were  
21 doing.

22 Q At that time did Dr. Ford go out  
23 on leave in the summer of 2018?

24 A She did take a leave for a period  
25 of time. I don't remember the exact timing.

1 R. MACDONALD

2 That could be another explanation for why  
3 she was copying Dr. Barbara Rioja.

4 Q And did she attempt to sign off  
5 her duties to Dr. Barbara Rioja?

6 MS. CANFIELD: Objection to  
7 form. You can answer.

8 A Some of them were signed off to  
9 Dr. Barbara Rioja.

10 Q Now, Dr. Barbara Rioja has a  
11 Ph.D., not a medical license; am I right?

12 A Yes.

13 Q So wouldn't that have been  
14 problematic if Dr. Ford attempted to, I  
15 guess, convey all of her responsibilities to  
16 Dr. Barbara Rioja since she was not a  
17 medical doctor?

18 A No.

19 Q She could have delegated them all?

20 A Her responsibilities were  
21 designated between Dr. Barbara Rioja and Dr.  
22 Subetti (phonetic). As it pertains to the  
23 FPECC clinic, she could have delegated all  
24 of her responsibilities, yes.

25 Q At that time was Dr. Subetti even

1 R. MACDONALD

2 working for CHS?

3 A Yes.

4 Q Was he a co-director at that time?

5 A No. She reported to Dr. Ford and  
6 they covered her work when she was on leave.

7 Q So Dr. Subetti was working in  
8 conjunction with Dr. Barbara Rioja when she  
9 went out on leave?

10 MS. CANFIELD: Objection to  
11 form. You can answer.

12 A When Dr. Ford went out on leave,  
13 yes.

14 Q So from June to, let's say, the  
15 fall of 2018, Dr. Barbara Rioja and  
16 Dr. Subetti were filling in for her?

17 A Again, I'm not going to confirm  
18 those exact dates.

19 Q So if that's the case, why isn't  
20 Dr. Subetti on this email?

21 A You asked me if -- all of her  
22 duties could be delegated to Dr. Barbara  
23 Rioja because she's a psychologist. And I  
24 explained that many of her duties were  
25 delegated to a psychiatrist.

1 R. MACDONALD

2 With regard to FPECC, yes, all of  
3 her duties could be delegated to a  
4 psychologist, Dr. Barbara Rioja, who is  
5 absolutely qualified to be administrative  
6 clinical director of the FPECC clinics, as  
7 she is today.

8 Q So I'm going to show you -- and  
9 she is the administrator director of the  
10 FPECC clinic, it's not shared between she  
11 and Dr. Subetti?

12 A Today it's Dr. Barbara Rioja who  
13 has that in her direct organizational chart.

14 Q And Dr. Subetti does not?

15 A Correct.

16 Q I'm going to show you what's going  
17 to be marked as Plaintiff's Exhibit 12.  
18 Plaintiff's Exhibit 12 bears the Bate Stamp  
19 series NYC3270, and it's the EEO service  
20 charge.

21 MS. HAGAN: And that should  
22 have been produced in the October  
23 production.

24 MS. CANFIELD: Thank you.

25 (Whereupon, Email (NYC\_3270) was



1 R. MACDONALD  
2 marked as Plaintiff's Exhibit 12  
3 for identification as of this  
4 date.)

5 Q There's quite a bit of redaction  
6 here, but I'm asking to bear with me. This  
7 is from Dr. Greenfield to Dr. Yang. She  
8 says, "Patsy, was redacted, if so I would  
9 like to schedule a call next week to discuss  
10 the allegations. This is Dr. Melissa Kaye,  
11 right?

12 A Yeah.

13 Q And then Dr. Yang responds to Ms.  
14 Greenfield and Ms. Laboy and Dr. Hicks.  
15 "Sorry. This got stuck in my outgoing due  
16 to a hurricane issues late yesterday. This  
17 is from Ms. Yang or Dr. Yang, right?

18 And then here you're CC'd on this.  
19 And it's a letter from Dr. Kaye's attorney.  
20 And Dr. Yang emails Ms. Laboy, yourself, and  
21 a number of other people. She says, "This  
22 really is a Bellevue issue, but so we should  
23 remain in the loop." Right.

24 But at this point, the clinics  
25 have been absorbed by CHS; am I right? This

1 R. MACDONALD

2 is July 7, 2018.

3 A Yes.

4 Q How is this a Bellevue issue now  
5 the Bronx court clinic is now under the  
6 purview of CHS?

7 MS. CANFIELD: Objection.

8 Maybe you should show him the  
9 underlying document.

10 MS. HAGAN: There is no  
11 underlying document. This is what  
12 I'm asking you right now. How is  
13 this an issue --

14 MS. CANFIELD: But it says  
15 there's an attachment there, Melissa  
16 Kaye -- under.

17 MS. HAGAN: You can't coach  
18 the witness.

19 MS. CANFIELD: I'm not. I'm  
20 just saying --

21 MS. HAGAN: I'm asking your  
22 client a question right now.

23 MS. CANFIELD: All right.

24 Answer if you can, Dr. MacDonald.

25 MS. HAGAN: Could you please.

1 R. MACDONALD

2 Q You're saying that this -- it's  
3 been saying that this is a Bellevue issue,  
4 but by now the clinics have been under the  
5 CHS purview for six days. How is that?

6 MS. CANFIELD: Again, answer  
7 if you're able.

8 MS. HAGAN: Please stop  
9 coaching the witness.

10 MS. CANFIELD: You know what,  
11 you're not showing him the complete  
12 document. So it's a really unfair  
13 question because obviously you're  
14 commenting on --

15 MS. HAGAN: Coaching the  
16 witness.

17 MS. CANFIELD: I'm not.  
18 You're misleading the witness. But,  
19 Dr. MacDonald, answer as best you  
20 can.

21 Q Were the court clinics under  
22 Bellevue on July 7, 2018, yes or no?

23 A Yes.

24 Q They were under Bellevue?

25 A I'm sorry. I got confused.

1 R. MACDONALD

2 No. As you represented, they had  
3 been with CHS for six days.

4 Q So if there's a pay parity issue,  
5 how is it a Bellevue problem if now the  
6 Bronx court clinic is under CHS?

7 MS. CANFIELD: Again,  
8 objection. Assumes facts not  
9 presented to the witness. We don't  
10 know what she complained about. But  
11 go ahead, Dr. MacDonald.

12 A Yeah. I mean, I think for a  
13 person who, as you mentioned, had been  
14 employed by Bellevue for many, many years,  
15 and as I mentioned, the transition generally  
16 takes people in at the salary that they were  
17 at, that this would be an issue that would  
18 have a great deal to do with Bellevue.

19 I also believe, as was mentioned,  
20 I don't know exactly what we're talking  
21 about here, but if it's a comparison to her  
22 salary with Dr. Circic, that's a person who  
23 is not employed by CHS, as far as I know.

24 Q I'm going to show you what's going  
25 to be marked as Plaintiff's Exhibit 13. And

1 R. MACDONALD

2 it bears the Bate Stamp series K third  
3 production 109 through 112.

4 MS. HAGAN: You should have  
5 received this during the October  
6 production, Ms. Canfield.

7 (Whereupon, EEOC Charge (Kaye's  
8 3rdProduction\_109-112) was  
9 marked as Plaintiff's Exhibit 13  
10 for identification as of this  
11 date.)

12 Q I'm going to scroll to Dr. Kaye's  
13 EEOC charge so that you have some context,  
14 right. I'm not sure if you actually saw the  
15 EEO charge itself. Did you, Dr. MacDonald?

16 A I don't believe so, no.

17 Q At the time Dr. Kaye did complain  
18 against Bellevue. This is right before it  
19 was absorbed by the court clinic, by CHS.  
20 You see that, right?

21 A Yes.

22 Q In the particulars area, she said,  
23 "I'm a 55-year-old Caucasian female who has  
24 worked for Bellevue Hospital and HHC since  
25 1999. Most recently as the Bronx court

1 R. MACDONALD

2 clinic medical director. I believe I have  
3 been discriminated against because of my sex  
4 in violation to equal pact as amended in  
5 Title 7 of the Civil Rights Act as amended.  
6 Specifically I've been paid less than the  
7 male Manhattan court clinic medical  
8 directors, despite having the same title and  
9 job duties. I've been paid under an  
10 attending three title since 1999, while the  
11 men, who have worked at the Manhattan court  
12 clinic medical directors have been paid as a  
13 physician specialist title. The physician  
14 specialist title carries a significant pay  
15 increase, and the male Manhattan court  
16 clinic medical directors have made  
17 significantly more money than I over the  
18 almost 20 years I have worked here. I  
19 believe I was given an attending three title  
20 and underpaid compared to my male  
21 counterparts because of my sex."

22 Now, you see this, right?

23 A Yes.

24 Q Does this refresh your  
25 recollection, if any?

1 R. MACDONALD

2 MS. CANFIELD: Objection to  
3 form. You can answer.

4 A I don't believe I've seen this  
5 document.

6 Q Now, just for purposes of clarity,  
7 we talked about your -- activity of sorts in  
8 the beginning of the deposition.  
9 Dr. MacDonald, is it fair to say that you're  
10 a Caucasian male?

11 A Yes.

12 Q So I want to go up some. And then  
13 Dr. Kaye supplemented her charge some. And  
14 I'd like to give you an opportunity to  
15 review what she's written.

16 And this is a supplemental charge.  
17 You see this, right?

18 A Yes.

19 Q And she says, "I filed a charge of  
20 discrimination with the EEOC on May 22, 2018  
21 based on sex discrimination against me in  
22 the form of unequal pay.

23 MS. CANFIELD: Ms. Hagan, you  
24 froze.

25 Q "Specifically I alleged that HHC

1 R. MACDONALD

2 has paid me less than other court clinic  
3 medical directors, despite having the same  
4 title and job duties." Right. And she lays  
5 out her history.

6 Do you recall reading any of this?

7 A No.

8 Q Now, she alleges that on July 1st.  
9 The oversight of the Bronx court clinic was  
10 transferred from Bellevue Hospital to  
11 Correctional Health Services, both of which  
12 are under the offices of HHC.

13 Would you agree with that?

14 A Yes.

15 Q Now, then she says, in July  
16 of 2018 Dr. Jain and Ms. Swenson switched  
17 her title and demoted her from medical  
18 director to title of director.

19 Do you agree with that?

20 A No.

21 Q Why are you in disagreement?

22 A That was not a demotion at all.  
23 They were simply standardizing the titles  
24 used in the clinic. And it was represented  
25 to her as not a demotion and not at all



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2 specific to her role or her performance.

3 Q To your knowledge, were all of the  
4 directors of all the clinics all referenced  
5 as directors?

6 A My understanding was that the  
7 attempt was to standardize it in that way.

8 Q But the question is, were they all  
9 referred to as directors?

10 A By whom?

11 Q Just by CHS management.

12 A I don't know. What I know from  
13 having conversations with Dr. Jain about  
14 this very thing, is that there was meaning  
15 assigned to it by Dr. Kaye that was not  
16 intended in any manner, and that it was  
17 solely to standardize the titles.

18 Whether the titles can be  
19 completely standardized, whether someone  
20 used the wrong title or used the wrong title  
21 for someone else subsequent to that, the  
22 fact remains that it was on a meaningful  
23 change, nor was it intended to be a demotion  
24 or a slight of any sort.

25 Q Did everybody have the same

1 R. MACDONALD

2 business cards and were all the directors  
3 referred to as directors and not medical  
4 directors?

5 A I don't know.

6 Q And who would have been  
7 responsible for ensuring that everybody had  
8 the same title?

9 A Again, it would be part of the  
10 leadership team, the management team,  
11 Dr. Jain, Ms. Swenson, the HR department,  
12 the CHS leadership team. I simply know that  
13 this was not a change that was intended to  
14 mean anything about her position, nor was it  
15 a demotion. And that was made clear to her,  
16 it's my understanding from talking about it  
17 with Dr. Jain at that time.

18 Q Asides yourself, who was the most  
19 senior person to ensure that everyone had  
20 the exact same title amongst the directors  
21 of the clinics?

22 MS. CANFIELD: Objection to  
23 form. You can answer.

24 A With regard to being called  
25 medical director versus director?

1 R. MACDONALD

2 Q Yes.

3 A I'm not sure who made that  
4 decision. It wasn't my decision.

5 Q It wasn't your decision. Who's  
6 decision was it?

7 A I don't know.

8 MS. CANFIELD: Objection to  
9 form.

10 Q Now, you have engaged in quality  
11 assurance during the course of your career;  
12 am I right?

13 A Yes.

14 Q And part of that effort, you  
15 described earlier that you wanted to make  
16 things more efficient and standardize things  
17 throughout the court clinics, right?

18 A Yes.

19 Q And in this instance, there was an  
20 effort to have all the directors at the  
21 various clinics be referenced in the same  
22 capacity, which would be the directors,  
23 right?

24 A That's my understanding, yes.

25 Q Who made the decision that the

1 R. MACDONALD

2 titles needed to change?

3 MS. CANFIELD: Objection.

4 Asked and answered. You can answer  
5 again.

6 A I don't know. I know that it was  
7 represented to me by Dr. Jain after the fact  
8 as something that Dr. Kaye in particular had  
9 a real problem with. Even though it was  
10 clearly a mechanism just to standardize  
11 those titles, and not intended to have any  
12 meaning in terms of her position or be a  
13 demotion.

14 Q But you can't testify today that  
15 all of the directors at each of the clinics  
16 had, in fact, been called only director  
17 versus medical director, right?

18 MS. CANFIELD: Objection to  
19 form. You can answer.

20 A No.

21 Q You can't?

22 A During what time period? Since  
23 the beginning of time or subsequent to that?

24 Q After they changed. You said that  
25 everybody had to have the same title.

1 R. MACDONALD

2 Right. So after this is put in place, you  
3 can't testify today that each of the center  
4 directors were called directors and not  
5 medical directors, right?

6 MS. CANFIELD: Objection to  
7 form. You can answer.

8 A No. I can't. I can just say that  
9 that was not intended to be a slight or a  
10 demotion.

11 Q So now I'm going to show you what  
12 will be marked as Plaintiff's Exhibit 14.  
13 Plaintiff's Exhibit 14 bears the Bate Stamp  
14 series NYC3322 to 3326.

15 MS. HAGAN: And it was  
16 produced in the October production.  
17 Actually, we don't need that because  
18 it's just the same thing. So let's  
19 scratch that.

20 MS. CANFIELD: It's the same  
21 thing as what?

22 MS. HAGAN: As 13.

23 Q I'm going to go to -- now, did it  
24 ever come to your attention that Dr. Kaye  
25 requested a reasonable accommodation?

1 R. MACDONALD

2 MS. CANFIELD: Objection to  
3 form. You can answer.

4 A I don't think so.

5 Q So there was never a time where  
6 Dr. Kaye approached management seeking a  
7 reasonable accommodation to care for her  
8 child?

9 MS. CANFIELD: Objection to  
10 form. You can answer.

11 A I just don't specifically recall  
12 that.

13 Q Do you know what management's  
14 position was for that?

15 MS. CANFIELD: Objection to  
16 form. You can answer.

17 A No. I don't know what the outcome  
18 of that request would be. There's a process  
19 in place for those requests to be considered  
20 and worked through.

21 Q What's that process, do you know?

22 A So there's, H&H has policy that  
23 governs a formal accommodation request. And  
24 then there's a discussion between H&H  
25 central and the supervisors around what

1 R. MACDONALD

2 could be reasonably accommodated.

3 Q Now, I'm going to ask you some  
4 questions about that.

5 Dr. MacDonald, who presides over  
6 the reasonable accommodations process at  
7 H&H?

8 A I don't know specifically who  
9 presides over that.

10 Q So you don't know who would be  
11 engaged; am I right?

12 MS. CANFIELD: Objection to  
13 form. You can answer.

14 A No. From my -- for when this  
15 comes across my desk personally I, again,  
16 reach out to CHS's HR leadership who direct  
17 us in the right direction of how to submit  
18 those.

19 Q Now, this particular exhibit was  
20 previously produced on one of the other  
21 depositions. It bears the Bate Stamp series  
22 NYC757 and NYC758.

23 MS. CANFIELD: Is this going  
24 to be P14?

25 MS. HAGAN: Exhibit 14, yes.

1 R. MACDONALD

2 (Whereupon, Email (NYC\_757-758)

3 was marked as Plaintiff's

4 Exhibit 14 for identification as

5 of this date.)

6 MS. CANFIELD: And did you

7 produce it --

8 MS. HAGAN: It was produced

9 previously. And I can tell you --

10 MS. CANFIELD: Yeah. But

11 we've had hundreds of -- I don't

12 have hundreds of those documents.

13 I'm just going to ask after the

14 deposition if you can email me.

15 MS. HAGAN: It's actually

16 produced at the Wangel deposition so

17 you should have it there.

18 MS. CANFIELD: That was a

19 month and a half ago. I don't have

20 it with me.

21 MS. HAGAN: It should be in

22 your computer.

23 MS. CANFIELD: Again, I'm

24 going to renew request for you to

25 produce all these documents again.



1 R. MACDONALD

2 Thank you.

3 MS. HAGAN: Okay. Sure. I'll  
4 produce the ones that I have.

5 Q Now, I'm going to do the share  
6 screen. Dr. MacDonald, you can see this  
7 screen, right?

8 A Yes.

9 MS. CANFIELD: Can you just  
10 share the Bate Stamp numbers again  
11 on the bottom.

12 MS. HAGAN: 757 and 758 NYC.

13 MS. CANFIELD: All right.

14 Thank you.

15 Q So emails from Dr. Kaye to Yvette  
16 Villaneuva. Do you know who that is?

17 A I don't know her exact title, but  
18 she's in charge of HR, as I understand it,  
19 for Health and Hospitals.

20 Q And then Dr. Jain is on this  
21 email, Mr. Wangel is on this email, Dr. Ford  
22 and Dr. Kaye, right?

23 A Yes.

24 Q And she says, "Dear Ms. Yvette  
25 Villaneuva. I've been a dedicated public

1 R. MACDONALD

2 servant in HHC for 19 years. I work in a  
3 the nonclinical setting at the Bronx court  
4 clinic as a forensic psychiatric evaluator  
5 and have been the medical director  
6 since 2004." Right.

7 "Under my leadership the Bronx  
8 court has produced quality examinations in a  
9 most timely manner."

10 Would you disagree with that?

11 A I'm not prepared to agree with  
12 that.

13 Q Okay. So what do you disagree  
14 with?

15 MS. CANFIELD: Objection to  
16 form. You can answer.

17 A I don't know the timeliness of  
18 Dr. Kaye's evaluation production over the  
19 course of her career.

20 Q When you were there, when Dr. Kaye  
21 was under your supervision or indirect  
22 supervision, were there any complaints about  
23 her timely production of reports?

24 A As I mentioned, the Bronx clinic  
25 consistently had a lower number of reports

1 R. MACDONALD

2 than the other clinics. I don't know all  
3 the root causes of that.

4 Q Do you believe that Dr. Kaye had  
5 any part in the alleged lower number of  
6 reports than the other clinics?

7 A I can't say for sure, but I  
8 certainly would not attest that she didn't.

9 Q Do you know when Dr. Winkler's  
10 replacement was hired to fill the position  
11 at the Bronx court clinic?

12 A No. Not specifically.

13 Q Do you know when Dr. Brayton was  
14 hired?

15 A No.

16 Q Do you know that there was a  
17 period of time when Dr. Kaye was the only  
18 full-time evaluator at the clinic?

19 MS. CANFIELD: Objection to  
20 form. You can answer.

21 A Yes. I mentioned there were  
22 problems with retention, yes.

23 Q Do you believe that Dr. Kaye was  
24 responsible for there not being a second  
25 evaluator at the clinic?

1 R. MACDONALD

2 A I don't know.

3 Q What steps did you personally take  
4 to ensure that there was full coverage at  
5 that clinic, Dr. MacDonald?

6 A I was supporting my supervisors  
7 who were working very hard to achieve the  
8 goals that we set out when we voluntarily  
9 took over all of the clinics.

10 Q So there is a window or gap  
11 between when Dr. Winkler went to fill the  
12 position at the Brooklyn court clinic as  
13 director and when Dr. Brayton actually  
14 filled in the position at the Bronx clinic,  
15 right? You do know that, right?

16 A Yes.

17 MS. CANFIELD: Objection to  
18 form. Go ahead.

19 Q So would you agree with me that  
20 from April 2018 to October 2018, Dr. Kaye  
21 was the only full-time evaluator at the  
22 Bronx court clinic?

23 MS. CANFIELD: Objection to  
24 form. You can answer if you're  
25 able.

1 R. MACDONALD

2 A I don't know the specific time  
3 course. That sounds reasonable.

4 Q Do you know when iSight was  
5 actually fully implemented at the Bronx  
6 court clinic?

7 A No.

8 Q In fact, it wasn't actually  
9 October, it was 2018, it was December 2018,  
10 when Dr. Brayton was actually hired  
11 full-time at the clinic.

12 So going back to iSight. You  
13 don't know when iSight was actually fully  
14 implemented at the Bronx court clinic; am I  
15 right?

16 MS. CANFIELD: Objection.

17 Objection to the colloquy before the  
18 question. You can answer.

19 A I don't know.

20 Q Who was responsible for ensuring  
21 that all the clinics had iSight?

22 A The administrative side of the  
23 clinics. So Ms. Swenson, that would be her  
24 primary responsibility. Certainly any  
25 barriers to that might be raised through

1 R. MACDONALD

2 Dr. Jain or Dr. Ford.

3 Q And who would have been  
4 responsible for assuring that the numbers in  
5 iSight were accurate?

6 A I don't know exactly which data  
7 elements you're referring to. I think there  
8 are a number of different data elements in  
9 general.

10 Q Well, in particular to the 730  
11 examination production, right. 'Cause  
12 you're saying you disagree with the fact  
13 that she was producing these reports in a  
14 timely manner, right?

15 A I said -- just to clarify, I said  
16 I couldn't attest to that.

17 Q Okay. So then let's keep going.  
18 She says she's worked an eight-and-a-half  
19 hour shift --

20 A Over a period of 19 years that  
21 she's referencing.

22 Q But you haven't worked there 19  
23 years. I understand. So we're moving on  
24 from that.

25 A Okay.

1 R. MACDONALD

2 Q So she says, "I have worked an  
3 eight-and-a-half-hour shift from 9:00 a.m.  
4 to 5:30 p.m., with a 30-minute unpaid lunch  
5 for over 13 years, per an agreement between  
6 HHC and doctor's counsel."

7 Were you aware of any agreement  
8 between HHC and doctor's counsel regarding  
9 work hours?

10 A No.

11 Q Did you ever learn of any  
12 agreement during the course of these  
13 discussions back and forth?

14 A I didn't -- no. I didn't.

15 Q "In August my shift was  
16 unexpectedly and adversely changed to  
17 8:00 a.m. to 5:00 p.m. with an hour lunch."

18 Was it your -- earlier you said  
19 that there was an effort to standardize the  
20 hours amongst all of the clinics. Could you  
21 attest today that all of the directors of  
22 each of the clinics worked 8:00 a.m. to  
23 5:00 p.m.?

24 MS. CANFIELD: Objection to  
25 form. You can answer.

1 R. MACDONALD

2 A No. I don't know.

3 Q And do you know if all of the  
4 directors had one-hour lunches?

5 A I think that would be the case for  
6 all of the unionized directors, but I don't  
7 know for sure.

8 Q Then she says, "I am a single  
9 mother with a chronically ill child and this  
10 has directly interfered with my ability to  
11 provide care to my child."

12 Now, do you remember that, now  
13 that we're talking about it and seeing the  
14 email?

15 A I can't recall this specific -- I  
16 remember there was a concern raised about  
17 the shift and the lunch duration. I don't  
18 know that I remember -- that I've seen the  
19 specific content of the reasonable  
20 accommodation request.

21 Q So now I'm going to get to that.

22 "I'm seeking reasonable  
23 accommodation by return to my prior shift,  
24 which was the 9:00 a.m. to 5:30 p.m. split  
25 shift and ability to work remotely." Right?



1 R. MACDONALD

2 "My previous supervisors allowed  
3 accommodations for my son's disability, and  
4 I have been more than able to perform the  
5 essential functions of my job with no  
6 disruption in work product. The above  
7 accommodations are needed so that I can  
8 administer treatment to my child as  
9 prescribed by his treating physician. Due  
10 to his age, the severity of the condition  
11 and the nature of this treatment, I need  
12 to -- administrate his care. Please advise  
13 me of informal process at HHC for seeking  
14 reasonable accommodations. Currently, I do  
15 not know about HHC's policy process for  
16 designated persons for obtaining reasonable  
17 accommodations."

18 Apparently, do you know today who  
19 she would have to go to for reasonable  
20 accommodations, Dr. MacDonald?

21 MS. CANFIELD: Objection.

22 Asked and answered. You can answer  
23 again.

24 A As I said, I mean, I would start  
25 with our CHS leadership to get their advice

1 R. MACDONALD

2 on that.

3 Q I'm going to ask you a question,  
4 you. You're talking about you would start  
5 with CHS leadership. I'm asking you today  
6 for --

7 If I'm your staff person,  
8 Dr. MacDonald, and I say, Dr. MacDonald, I  
9 have -- I've been falling out from COVID for  
10 the last two years. I need a reasonable  
11 accommodation. Right. Who are you going to  
12 direct me to? What is their name?

13 MS. CANFIELD: Objection to  
14 form. Asked and answered. You can  
15 answer again.

16 A As I said many times, I would  
17 double check to make sure I have the right  
18 person with our CHS leadership. It may very  
19 well be Mr. Marazo, who I believe is on  
20 this email chain, though I am not. But I  
21 want to make sure that I get that right. So  
22 I always go to our CHS leadership and HR, to  
23 make sure that they are aware of the request  
24 and that it goes through the right channel.

25 Q I'm going to ask you a question,

1 R. MACDONALD

2 and I want you to be succinct and fair.

3 Do you know who the person is who  
4 is responsible for the processing reasonable  
5 accommodation requests?

6 MS. CANFIELD: Objection to  
7 form. Asked and answered.

8 Q What is their name?

9 MS. CANFIELD: Asked and  
10 answered. You can answer again.

11 A As I said, I would double check  
12 with our HR leadership. I know Mr. Morazo  
13 who is on this email chain --

14 Q But you don't know; isn't that  
15 fair?

16 MS. CANFIELD: Excuse me.  
17 You're harassing the witness. He's  
18 trying to respond. You're harassing  
19 him.

20 MS. HAGAN: He doesn't know  
21 the person's name. He needs to just  
22 admit it so we can move on. We  
23 don't know his name.

24 MS. CANFIELD: Thank you. He  
25 does know his name. He just --

1 R. MACDONALD

2 Q What's his name?

3 MS. HAGAN: No. He doesn't.

4 Q At the time, did you know that Dr.  
5 Kaye should have gone to Mr. Morazo?

6 MS. CANFIELD: Does it matter?

7 Obviously Dr. Kaye didn't either, so  
8 let's move on.

9 MS. HAGAN: If Dr. Kaye  
10 doesn't know -- I'm asking him a  
11 question. I'm not letting up.

12 Q Did you know that Dr. Kaye should  
13 have gone to Mr. Morazo at the time?

14 A My job as a supervisor is to get  
15 the person to the right people to address  
16 their request. And I know I could do that.  
17 I don't have to know who it was at that  
18 time. And it's better if I double check so  
19 I don't send them to the wrong person.

20 Q Dr. MacDonald, would you have  
21 known to go to Mr. Morazo if you needed a  
22 reasonable accommodation at that time, yes  
23 or no?

24 A I wouldn't --

25 MS. CANFIELD: Objection.

1 R. MACDONALD

2 Asked and answered.

3 Q I'm asking you right now. Would  
4 you know to go to him?

5 A I wouldn't have gone to him  
6 directly. So, no, I would not have know to  
7 go to him, because I would not have gone to  
8 him directly.

9 Q Does HHC have a reasonable  
10 accommodation policy that basically lays out  
11 who is the person?

12 A Yes.

13 Q Did you read that policy?

14 A Yes. And I could find it on the  
15 Internet right now. My point is, I know  
16 exactly how to get this done for my staff.

17 Q Right. But you don't know that  
18 person's name, though?

19 A No.

20 MS. CANFIELD: Objection.

21 Again, assumes that there's one  
22 person -- officers. Let's move on.

23 A That person could have been  
24 replaced yesterday, for all I know.

25 Q But you didn't know and you didn't

1 R. MACDONALD

2 have the policy at that time, because  
3 Dr. Kaye didn't know it either; am I right?

4 MS. CANFIELD: Objection.

5 There is a policy. You can answer.

6 A I absolutely knew that there was a  
7 policy and how to get to it and how to get  
8 to the appropriate people to address a  
9 request like this.

10 Q At the end of this email Dr. Kaye  
11 says, "Please advice me of the formal  
12 processes at HHC for seeking reasonable  
13 accommodations. Currently, I do not know  
14 about HHC's policy process or designated  
15 persons for obtaining reasonable  
16 accommodations." Right?

17 You see that at the end of the  
18 email, right?

19 A I do.

20 Q Then Mr. Wangel said, "Dr. Kaye,  
21 Mr. Morazo is the EEO officer assigned to  
22 Correctional Health Services." Right?

23 A Yes.

24 Q "Please reach out to him directly  
25 and is he will explain the procedure to

1 R. MACDONALD

2 request a reasonable accommodation. I have  
3 included his contact information below.  
4 Thank you."

5 Now, he's designated as the EEO  
6 officer for Correctional Health Services; am  
7 I right?

8 A That's what Mr. Wangel is  
9 indicating here at that time, yes.

10 Q Right. Mr. Wangel doesn't send  
11 Dr. Kaye a policy in this email. You don't  
12 see any attachments here, right?

13 MS. CANFIELD: Objection. You  
14 can answer.

15 A No. I don't.

16 Q And then he directs Dr. Kaye to  
17 contact Mr. Morazo, right. And then Ms.  
18 Laboy tells Mr. Wangel to remove PY, I guess  
19 Ms. Yang, from the responses. Do you know  
20 why that would be the case?

21 A No.

22 Q Had you ever seen any email like  
23 that before, to remove Ms. Yang from the  
24 emails?

25 A Yes.

1 R. MACDONALD

2 Q Why?

3 A Patsy at times doesn't want to get  
4 extraneous emails in her inbox. So she'll  
5 sometimes request to be removed from chains.

6 Q So a request from a person whose  
7 filed a EEOC complaint and complained of pay  
8 parity, and now she's saying that she needs  
9 to have her shift reverted so that she can  
10 deal with a special needs child, that would  
11 be an extraneous email?

12 MS. CANFIELD: Objection.

13 Mischaracterization. You can  
14 answer.

15 A For the senior vice president to  
16 be on every iteration of that email chain  
17 would be, yes.

18 Q From your knowledge, did Ms. Yang  
19 contact any of you to find out if Dr. Kaye  
20 received the reasonable accommodation?

21 MS. CANFIELD: Objection. You  
22 can answer if you're able.

23 A Not to my knowledge.

24 Q Was there a reason why Dr. Kaye  
25 could not go back to her shift of 9:00 to



1 R. MACDONALD

2 5:30?

3 MS. CANFIELD: Objection to  
4 form. You can answer.

5 A I don't know.

6 Q Did you speak to any of the staff  
7 members about the reasonable accommodation  
8 request that Dr. Kaye sought?

9 A I did not.

10 Q Okay. Why not?

11 A In general, these processes go  
12 through, they follow the H&H policy, where  
13 there's a process to discuss the potential  
14 accommodation with the staff member's  
15 supervisor. The supervisor makes the  
16 decision about whether their clinic can  
17 accommodate that.

18 Q Now, I have a question,  
19 Dr. MacDonald. Is there an appeals process  
20 if the employee does not agree with the  
21 outcome or the decision made at H&H?

22 MS. CANFIELD: Objection to  
23 form. What kind of decision? You  
24 can answer if you're able.

25 Q If a reasonable accommodation

1 R. MACDONALD

2 request is denied, does the H&H employee  
3 have the option of appealing that decision?

4 A I don't know that detail. I would  
5 look at the policy on the website to answer  
6 that question.

7 Q So you're not sure about that.

8 I'm going to direct you to what's  
9 going to be known as Plaintiff's Exhibit 15.  
10 And Plaintiff's Exhibit 15 is the Board of  
11 Correction complaint. And it was produced  
12 in the October production. It does not have  
13 a Bate Stamp.

14 (Whereupon, Correction Complaint  
15 was marked as Plaintiff's  
16 Exhibit 15 for identification as  
17 of this date.)

18 MS. CANFIELD: What's the name  
19 of the document?

20 MS. HAGAN: It's the Board of  
21 Correction complaint that Dr. Kaye  
22 filed.

23 MS. CANFIELD: I have  
24 something that says board.

25 MS. HAGAN: I guess that would

1 R. MACDONALD

2 be it. January 7, 2020. The  
3 October production.

4 MS. CANFIELD: I'm looking at  
5 it. No, this is not -- this is  
6 about board exams that I'm looking.

7 It was not provided. If you  
8 could provide that as well.

9 MS. HAGAN: It should be  
10 provided in the --

11 MS. CANFIELD: It was not. If  
12 you can just put --

13 MS. HAGAN: It's okay, Ms.  
14 Canfield. Now, I'm going to give an  
15 opportunity for Dr. MacDonald to  
16 read the document. You have it.

17 MS. CANFIELD: I do not have  
18 it, but I would like to read it. So  
19 I will read it now.

20 MS. HAGAN: It was produced.

21 MS. CANFIELD: In fact, I  
22 don't think this was ever produced.  
23 Can you show me the Bate Stamp  
24 numbers, please.

25 MS. HAGAN: There is no Bate

1 R. MACDONALD

2 Stamp and I sent it --

3 MS. CANFIELD: Well, it was  
4 not properly produced. It needs to  
5 be produced with Bate Stamps --

6 MS. HAGAN: Let's give him a  
7 chance to read it.

8 MS. CANFIELD: But I'm asking  
9 if you can produce this document.

10 MS. HAGAN: I'll produce it  
11 again. I'll do it at whatever way I  
12 please. How about that.

13 MS. CANFIELD: Well, we do it  
14 with Bate Stamps. But now we're  
15 aware it's a -- document, please --

16 MS. HAGAN: I'll do it  
17 whatever way I please how about  
18 that.

19 MS. CANFIELD: We do it with  
20 Bate Stamps. It's a state document  
21 he can read.

22 MS. HAGAN: You don't have to  
23 keep stalling. Let him read.  
24 I'll --

25 MS. CANFIELD: I'm not

1 R. MACDONALD

2 stalling. I've asked for this  
3 several times.

4 MS. HAGAN: And you've had it  
5 several times.

6 MS. CANFIELD: Excuse me. I'm  
7 not creating busy work for you, Ms.  
8 Hagan. I'm just honestly saying I  
9 don't have it, it's not Bate  
10 Stamped, that's how you refer to  
11 them. Can you please scroll through  
12 them.

13 MS. HAGAN: Are you continuing  
14 to read, Dr. MacDonald? I know  
15 there's a lot of talking in the  
16 background.

17 A I'm sorry. Can you go to the top  
18 again.

19 Q Sure.

20 A Okay. You can scroll down.

21 Q Now, do you recognize this  
22 complaint, Dr. MacDonald?

23 A Yes.

24 MS. CANFIELD: Can we read the  
25 whole thing because I don't want see

1 R. MACDONALD

2 it. I don't have a copy. And,  
3 actually, before Dr. Kaye's  
4 deposition on Monday, I would like a  
5 copy of this in my mail box, Bate  
6 Stamped, please.

7 MS. HAGAN: You'll have a  
8 copy.

9 MS. CANFIELD: Okay. Please  
10 provide that.

11 Q Now, I'm going to ask you some  
12 questions and I'm going to let you continue  
13 to read, but I want to ask you some  
14 questions about the dual agency, because we  
15 talked about the dual loyalty discussion  
16 earlier.

17 Now, there is a paragraph here  
18 that talks about dual agency prohibitions,  
19 right? And it says, "A fundamental dictum  
20 for the ethical practice of psychiatry is to  
21 void dual agency in the practice of clinical  
22 and forensic psychiatry. This mandates a  
23 clear distinct preparation between clinical  
24 treatment and forensic assessments to guard  
25 against ethical, legal and practice

1 R. MACDONALD

2 violations. Avoiding the overlap clinical  
3 treatment with forensic activities to ensure  
4 forensic evaluation render unbiased  
5 psychiatric legal opinions and protects the  
6 confidentiality afforded to patients in  
7 treatment relationships.

8 She accuses CHS of wantonly  
9 violating the dual agency prohibition,  
10 causing direct harm in defendants. In  
11 treatment, a defendant is a patient and  
12 there's a doctor/patient relationship that's  
13 supportive, accepting and emphatic. The  
14 goal is to benefit the patient and the  
15 relationship is not adversarial. The  
16 clinician provides treatment and advocacy  
17 and diagnostic assessment for the purpose of  
18 clinical care, with minimal scrutiny applied  
19 to information obtained HIPPA applies. By  
20 contrast, in a forensic evaluation there is  
21 no doctor/patient relationship. There's  
22 attorney-client privilege and judicial  
23 authority. The forensic evaluation is  
24 neutral, objective and detached. The  
25 expertise and focus of the forensic

1 R. MACDONALD  
2 evaluator is to address the psychiatric  
3 legal question for the Court. The  
4 evaluators attorneys and the court  
5 scrutinize the information in an adversarial  
6 setting. The relationship between the  
7 forensic evaluator in evaluating is based on  
8 clinical judgment and there is no  
9 therapeutical lines. HIPPA does not apply.

10 Now, she does says CHS has  
11 wantonly violated in the dual agency  
12 prohibition, causing direct harm to  
13 defendant. You disagree with that; am I  
14 right, Dr. MacDonald?

15 A I do disagree with that, yes.

16 Q Why do you disagree?

17 A Because there's no evidence of  
18 that, and we work very hard to respect the  
19 principles which she lays out in this  
20 section.

21 Q You issued this policy, right,  
22 this dual agency policy that we had talked  
23 about earlier today, right?

24 Is that what you're referencing as  
25 your efforts to --



1 R. MACDONALD

2 A I don't believe that policy used  
3 the term dual agency to talk about dual  
4 roles. And absolutely, you know, this is a  
5 clear ethic and an important principle that  
6 we've abided by from the beginning.

7 The fact of wanting to do the  
8 evaluations as efficiently as possible for  
9 the sake of minimizing the time at a  
10 population level, people stay in pretrial  
11 detention has nothing to do with individual  
12 evaluations, which must be protected.

13 And CHS has never done anything to  
14 influence the results of any of the  
15 evaluations in the court clinics. And we  
16 never would because we understand the  
17 distinctions that she has laid out here.  
18 The only sentence I disagree with is the one  
19 that she's presented here in bold with no  
20 evidence for, which is that we wantonly  
21 violated these principles. We, in fact,  
22 agree with the principles she's laid out  
23 here, and that's how we've operated from the  
24 beginning.

25 Q So at no point was there a push to

1 R. MACDONALD

2 do evaluations either without records or  
3 with redacted records by CHS management?

4 MS. CANFIELD: Objection to  
5 form. You can answer. It seems to  
6 be the right topic, but go ahead.

7 A I think we've been through the  
8 legitimate differences of clinical opinion  
9 that someone like Dr. Ford had with Dr. Kaye  
10 on that issue. And that is not at all a  
11 violation of any of the principles here.

12 Q So there is a question as to  
13 whether or not a defendant is entitled to a  
14 thorough assessment of their psychiatric  
15 status; is that fair?

16 A No. Absolutely not. There's no  
17 question that they are entitled to a  
18 thorough assessment of their psychiatric  
19 status. The question is whether certain  
20 types of information that are redacted from  
21 the chart by law, and have to be, because we  
22 haven't been able to get around the  
23 provisions of New York State law that  
24 require them to be, are a reason to not do  
25 an evaluation, versus in the formulation, as

1 R. MACDONALD

2 Dr. Ford laid out in her email, indicating  
3 what any barriers were.

4 Q I'm going to ask you something.  
5 What New York State law are you referencing  
6 that requires the redaction of medical  
7 records?

8 A Again, I'm not an attorney, but I  
9 represented to you that CHS looked into  
10 these questions with attorneys who represent  
11 CHS and H&H, and came to these conclusions.

12 Obviously, it's our preference,  
13 given the reasons why we embarked on  
14 consolidating these clinics, taking this  
15 over, trying to make it better, that we  
16 would want all the records to be unredacted.  
17 Not require less effort on the part of our  
18 staff who have to do those redactions and  
19 the records would come virtually  
20 instantaneously because it's all electronic.

21 Q Now I'm going to ask you --

22 A So there's no reason that we would  
23 want to present a barrier to that for any  
24 cause other than what we understood it to be  
25 required by law.

1 R. MACDONALD

2 Q Now, are there instances where a  
3 person, I guess a medication that a person  
4 might have or take, would impact their  
5 ability to knowingly participate in their  
6 defense?

7 A Certainly. And there are all  
8 kinds of complex issues related to the  
9 practice of doing these forensic  
10 evaluations.

11 Q And what about the substance abuse  
12 history, would that have been something that  
13 would have been redacted from these medical  
14 records?

15 A Again, only as far as it's legally  
16 required to be.

17 Q Now, if they were redacted, the  
18 substance abuse history, couldn't that have  
19 also impacted on a person's ability to be  
20 fit?

21 A I think that my understanding of  
22 this, from talking to experts who I've  
23 supervised, who are in charge of this  
24 program, is that you can make a reasonable  
25 determination of how much information that

1 R. MACDONALD

2 you were not privy to, might have impacted  
3 your evaluation in a specific case, and that  
4 you can include that in your report. And  
5 that that would be a reasonable way to deal  
6 with that information, to then allow the  
7 courts to make a decision about where to go  
8 from there.

9 Q Who are the experts that you're  
10 identifying?

11 MS. CANFIELD: Objection to  
12 form. Experts in charge of what?

13 Q What experts are you identifying  
14 that you conferred with regarding the  
15 information that would be necessary for an  
16 evaluator to make a reasonable assessment of  
17 the records?

18 A In this case, I'm representing an  
19 opinion that I believe would be agreed to by  
20 Dr. Elizabeth Ford, who is in charge of  
21 these clinics, or the initial period under  
22 which we took them over.

23 Q Now, Dr. Ford, is it your opinion  
24 that Dr. Ford had more expertise on this  
25 subject matter than Dr. Kaye?

1 R. MACDONALD

2 A I think Dr. Ford had a broader  
3 perspective that encompassed the range of  
4 opinions from all the evaluators in both her  
5 broad clinical experience in forensic  
6 psychiatry, and her management of the  
7 clinic. I don't think that, if there's a  
8 reasonable difference of opinion on a  
9 matter, that the person who's been doing it  
10 the longest is necessarily the person whose  
11 opinion is most valid.

12 Q Now, Dr. Kaye had been doing the  
13 longest; am I right?

14 A Probably had, yes. It doesn't  
15 mean that she is correct about every one of  
16 her assertions. That gets out the root of  
17 the challenges that her supervisors face  
18 with her, because any disagreement with Dr.  
19 Kaye's opinion was taken as a personal  
20 attack, when it was not. And really the  
21 effort was to work together to make the  
22 clinics better.

23 Q Did anyone really confer with  
24 Dr. Kaye before imposing this particular set  
25 of requirements on her, any other

1 R. MACDONALD

2 directors -- I mean, you had Dr. Winkler  
3 saying that he needed unredacted records,  
4 right, and you also have Dr. Kaye saying she  
5 needs unredacted records. Now, you have two  
6 doctors, two evaluators saying that they  
7 need unredacted records.

8 So there's not just difference of  
9 opinion with Dr. Kaye and Dr. Ford, there's  
10 at least another doctor saying that they  
11 disagree with this, and even Dr. Mundy at  
12 some point.

13 A Again, all of those are aligned  
14 that we want the records to be unredacted.  
15 That would have been the easiest path and  
16 the most efficient path, and that was our  
17 goal. It is only legal barriers that made  
18 that impossible to do.

19 Q So who put those legal barriers in  
20 place, Dr. MacDonald?

21 MS. CANFIELD: Objection.

22 Asked and answered. You can answer  
23 again.

24 A Not CHS.

25 Q So who did?

1 R. MACDONALD

2 A Again, as I've said many times,  
3 CHS's intention was to remove all barriers  
4 to doing this process efficiently and  
5 effectively.

6 Q Who wanted to remove the barriers?

7 A The investigation of the  
8 legalities of that lead us to understand  
9 that we need to continue to redact that  
10 information.

11 Q Dr. MacDonald, you keep saying  
12 there are legal barriers, but who is  
13 responsible for the legal barriers?

14 A I don't know. I'm not a lawyer  
15 and I can't say. But I know that that was  
16 the investigation that was undertaken, and  
17 that the advice of the counsel, the  
18 interpretation of the law of New York State  
19 was that we had to do it that way.

20 Q If the court requested --

21 A And so that's not for me to  
22 disagree with, it's not for Dr. --

23 MS. CANFIELD: Hold on. Hold  
24 on. One at a time, please.

25 Q Dr. MacDonald, the court demanded



1 R. MACDONALD

2 unredacted records. Judge Moore requested  
3 unredacted records, he ordered. Yet CHS  
4 insisted upon producing redacted medical  
5 records.

6 Where is CHS getting the authority  
7 to defy the Court?

8 MS. CANFIELD: Objection.

9 Objection. We've not -- who's Judge  
10 Moore? We haven't been talking  
11 about Judge Moore.

12 MS. HAGAN: We talked about  
13 Judge Moore earlier. Please.

14 MS. CANFIELD: We talked about  
15 Judge Torres. Okay. Whatever. Go  
16 ahead, answer.

17 Q Is that going to be your answer,  
18 Dr. MacDonald, who's Judge Moore; is that  
19 your answer?

20 A No. I'm going to say that I'm not  
21 an attorney. I can't answer that question.  
22 But I can say with certainty that CHS has no  
23 motivation to hinder the evaluations. And  
24 so we would not be doing any of that unless  
25 we were being counseled by lawyers that we

1 R. MACDONALD

2 had to do that.

3 Q Now, is Patrick James Albert an  
4 expert in criminal law?

5 A I don't believe so. He's an  
6 attorney by training, and he was an  
7 administrator for CHS.

8 Q And wasn't he advising you and CHS  
9 management as to whether or not these  
10 medical records should be redacted?

11 A He was involved in the exploration  
12 of that question. I don't think that it  
13 would have been his final decision.

14 Q And didn't a Brendon McVay  
15 (phonetic) also participate in the process  
16 of determining whether or not these medical  
17 records should be redacted?

18 A Yes. I believe so.

19 Q And is Mr. McVay an expert in, I  
20 guess the 730 examination process?

21 MS. CANFIELD: Objection to  
22 form. We are talking about HIPPA  
23 laws, not examination process, but  
24 go ahead.

25 A I don't know him to be.

1 R. MACDONALD

2 Q Is he an expert on HIPPA laws?

3 A I don't know him to be.

4 Q Is he an expert on criminal  
5 matters?

6 A No. But, again, he has the  
7 resources of the law department and H&H's  
8 legal department to help him with areas of  
9 expertise that are beyond his.

10 Q His purview?

11 A Yes.

12 Q Now, at any point was there an  
13 issue with Dr. Kaye recording an  
14 examination?

15 A Yes.

16 Q What do you remember about that?

17 A I don't remember exactly how it  
18 came to light, but it became known to the  
19 clinic supervisors that Dr. Kaye was  
20 recording examinations without their  
21 awareness.

22 Q And, I mean, what exactly do you  
23 remember about that?

24 A I remember that it came to light,  
25 and there was a question -- you know, it

1 R. MACDONALD

2 seemed like a breach of policy. And my  
3 impression was that it had been done without  
4 consent. And there was a discussion of  
5 whether it rose to the level of a  
6 termination offense.

7 Q Now, wasn't the instance with  
8 Dr. Kaye allegedly recorded the exam  
9 involving Jose Gonzalez?

10 A I don't know.

11 Q Do you know who Jose Gonzalez was  
12 or is?

13 A No.

14 Q Do you remember him being the EMT  
15 killer?

16 MS. CANFIELD: Objection.

17 Asked and answered. You can answer  
18 again?

19 A No.

20 Q At any point during the process of  
21 the discussions to, I guess, address the  
22 issue of Dr. Kaye recording the examination,  
23 did you ever speak to her --

24 A No.

25 Q -- about her claim? Why not?

1 R. MACDONALD

2 A There was no particular reason for  
3 it to be worked out between her and I versus  
4 at the level of her supervisors and HR and  
5 legal, because there was some legal  
6 questions around this.

7 Q Did you inquire about disciplining  
8 Dr. Kaye about recording the exam?

9 A I don't recall.

10 Q I'm going to show you what's going  
11 to be marked as Plaintiff's Exhibit 15. It  
12 was produced in the October production.

13 MS. CANFIELD: I think it's  
14 16.

15 MS. HAGAN: I guess you would  
16 be right. It would be 16. And it  
17 was produced in the October  
18 production. And it bears the Bate  
19 Stamp series NYC2946.

20 (Whereupon, Email (NYC\_2946) was  
21 marked as Plaintiff's Exhibit 16  
22 for identification as of this  
23 date.)

24 MS. CANFIELD: I just want to  
25 be clear, when you say October

1 R. MACDONALD

2 production, you mean the emails you  
3 sent me with the exhibits you used  
4 in Dr. MacDonald's --

5 MS. HAGAN: Original  
6 deposition.

7 MS. CANFIELD: That's what I  
8 thought. All right. I'm looking  
9 for it. 2946?

10 MS. HAGAN: Yes.

11 MS. CANFIELD: Got it.

12 Q Now, Dr. MacDonald, there's an  
13 email from you on June 18, 2019. And it  
14 says regarding recording the forensic exam.

15 You see that, right?

16 A Um-hmm.

17 Q And then Dr. Ford responds to you  
18 and Dr. Wangel, "Note, Kaye was out on FMLA  
19 and leave until the time I clarified my role  
20 in this until yesterday. Am calling her  
21 today to schedule. Clarence and I are  
22 meeting with her."

23 Who's Clarence?

24 A Clarence Mare is an administrator  
25 manager within CHS.

1 R. MACDONALD

2 Q Would it be common that Dr. Ford  
3 would meet with him and Dr. Kaye about a  
4 matter of this sort?

5 A I don't know that there were  
6 commonly matters that rose to this level.  
7 It doesn't seem unusual to me.

8 Q And you write this email to  
9 Dr. Ford with the subject, "Did we complete  
10 the discipline", right?

11 A Yes.

12 Q Now, you're referring to the  
13 recording exams in the discipline, okay. So  
14 what do you think that -- what does that  
15 entail in your thought process,  
16 Dr. MacDonald?

17 MS. CANFIELD: Objection to  
18 form. You can answer.

19 A It entails a meeting with Dr. Kaye  
20 to go over the discipline and expectation.

21 Q Now, at that time was there a  
22 policy in place that prohibited forensic  
23 evaluators from recording examinations?

24 A No. It hadn't occurred to us to  
25 create such a policy.

1 R. MACDONALD

2 Q So why are you referring to it as  
3 discipline at this point if there was no  
4 policy in place?

5 A Because it still seemed like a  
6 breach of the trust of the people involved.  
7 It still seemed like a significant problem.  
8 And even if there was not a specific policy  
9 prohibiting it, it seemed clear to us that  
10 there was reasonable judgment that would  
11 have made it obvious that it should be  
12 discussed with clinic leadership or with the  
13 other parties who are being recorded.

14 Q Now, you're saying all this. Did  
15 you refer to any, I guess, any guiding  
16 documents in your assessment in making the  
17 determination that recording exams was a  
18 violation or breach of any kind of sort?

19 MS. CANFIELD: Objection to  
20 form. You can answer.

21 A No.

22 Q Okay. Why not?

23 A Because I'm making that assessment  
24 as a person with a reasonable familiarity  
25 with these clinics and just professional



1 R. MACDONALD

2 practice in general. But if you're going to  
3 be recording people, it's just basic decency  
4 to let them know and to make sure that  
5 everyone is aware of that, including your  
6 supervisor, if you're doing it in a work  
7 setting.

8 Q Now, do you know who was present  
9 when Dr. Kaye allegedly recorded  
10 Mr. Gonzalez's exam?

11 A No.

12 Q Do you know when she recorded his  
13 exam?

14 A No.

15 Q So who should she have told, if  
16 you don't know who was there, who should she  
17 have told?

18 MS. CANFIELD: Objection to  
19 form. You can answer.

20 A Her supervisors.

21 Q But her supervisors --

22 A And people who were present,  
23 whoever they might have been.

24 Q Did you know if this was standard  
25 practice or not?

1 R. MACDONALD

2 A I knew it to not be standard  
3 practice.

4 Q How did you make that  
5 determination?

6 A Because we had never heard of it  
7 from anyone before.

8 Q Did you consult with the APPL  
9 guidelines for recording of examinations in  
10 your assessment?

11 A No. I just explained to you why I  
12 had a problem with it and what the problem  
13 was.

14 Q Okay. I'm going to show you  
15 what's going to be marked as Plaintiff's  
16 Exhibit 17. Plaintiff's Exhibit 17 are the  
17 APPL guidelines. I believe actually I  
18 edited them. So they don't have a Bate  
19 Stamp, but they were produced today.

20 (Whereupon, APPL Recording  
21 Guidelines was marked as  
22 Plaintiff's Exhibit 17 for  
23 identification as of this date.)

24 MS. CANFIELD: Edited version?

25 MS. HAGAN: Yes.

1 R. MACDONALD

2 MS. CANFIELD: Is that APPL  
3 video recording guidelines?

4 MS. HAGAN: Yes. And it  
5 should be four pages.

6 MS. CANFIELD: Thank you. I  
7 have that.

8 Q Now, I'm going to show you some  
9 highlighted portions of the document. And  
10 this is going to be Plaintiff's Exhibit 17.  
11 Okay.

12 Now, the first portion I'm going  
13 to show you, Doctor -- first off, I'm going  
14 to show you the first page. Title page is,  
15 Video Recording the Forensic Psychiatric  
16 Evaluation. You see that, the APPL task  
17 force, right?

18 A Yes.

19 Q I'm going to scroll down to the  
20 highlighted portion here. It says, "There  
21 is some disagreement regarding the necessity  
22 of obtaining consent for video recording  
23 interviews. Some experts feel that video  
24 recording is equivalent to note taking and  
25 that only consent to the interview is

1 R. MACDONALD

2 necessary." You see that, right?

3 A Yes. I also see the next  
4 sentence.

5 Q "It is generally prudent to notify  
6 the opposing attorney that you are planning  
7 to videotape. If the attorney has  
8 objections, they may be raised before the  
9 evaluation proceeds. It's prudent, but it's  
10 not necessarily required."

11 You do see that, right?

12 A Yes. And, again, talking about a  
13 person who's working in the context of an  
14 organized clinic, where they work with  
15 colleagues and they work under an  
16 administrated structure. So it's not just  
17 what APPL says about this that's at  
18 question. But as a person operating in a  
19 clinic with my colleagues and my  
20 supervisors, should I be recording routinely  
21 without telling anybody.

22 Q But she's not being accused of  
23 recording routinely. She's being accused of  
24 recording this --

25 A Should not record even once

1 R. MACDONALD

2 without telling the people I work with and  
3 my supervisors. That the judgment question,  
4 that I'm making a judgment about as a person  
5 and as a manager of people in the variety of  
6 different settings.

7 Q But, Dr. MacDonald, you've already  
8 testified earlier that you're not really  
9 aware who was present at this exam; am I  
10 right, besides Dr. Kaye?

11 MS. CANFIELD: Objection to  
12 form. You can answer.

13 Q Right?

14 A I'm certain that there was a  
15 defendant present and another examiner and  
16 probably an attorney.

17 Q Right.

18 A I don't know the specific  
19 individuals. But, again, this is more about  
20 whether you would do that without telling  
21 your supervisor in the course of your  
22 employment in a clinic where you worked with  
23 other people.

24 Q How would it come to be that she  
25 would be -- how would it come to be that

1 R. MACDONALD

2 Dr. Kaye, who does any number of 730 exams  
3 in a given day, that she's going to record  
4 this particular 730 exam, she's going to  
5 tell Dr. Jain, oh, I'm going to record this  
6 exam? I mean, how do you propose that  
7 works? There was no process like that in  
8 place beforehand; am I right?

9 MS. CANFIELD: Objection to  
10 form. You can answer.

11 A Yeah. So either it was an  
12 extraordinary thing that she did only in  
13 that case, in which case she should bring it  
14 up to her supervisor, or as something she  
15 routinely, in which case she should bring it  
16 up to her supervisor. It's a question of  
17 judgment.

18 Q But there was nothing in place to  
19 that, right? Now, I'm going to scroll --

20 A Again, it's a question of  
21 judgment. There was no policy in place  
22 because we didn't think we needed to write a  
23 policy to cover that situation.

24 Q Now, there's some advantages to  
25 recording here, right. It says, "The

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2 advantages include accuracy of the record,  
3 improvement in recording, and the ability to  
4 use recordings in court to support an  
5 expert's opinion. The disadvantages include  
6 the likely occurrence of more intricate  
7 cross examination by the opposing attorney.  
8 Close scrutiny by the expert, inconvenience  
9 and unknown affect on the interviewer. And  
10 the remote possibility of their use as a  
11 basis for liability," right?

12 But that wasn't the issue that  
13 anyone had, right?

14 MS. CANFIELD: Objection to  
15 form.

16 Q Now, I'm going to this portion  
17 here.

18 "The task force finds the option  
19 of video recording to be an ethically  
20 acceptable medical practice." Right?

21 Now, how is it that if APPL that  
22 governs psychiatry, the practice of  
23 psychiatry, and it's the task force, they  
24 find it to be ethically acceptable, but CHS  
25 doesn't?

1 R. MACDONALD

2 MS. CANFIELD: Objection to  
3 form. You can answer.

4 A I hope that one could recognize  
5 that there's a basic question of judgment  
6 about, even if something is accepted  
7 practice, to understand that when you  
8 operate within the context of a clinic,  
9 that's part of an organization, that you  
10 should bring that up with your supervisor if  
11 you're going to do something like that.

12 Because though you can find a  
13 petition statement that says it's fine,  
14 there might be a range of opinions about  
15 that. And in any case, it would normal and  
16 appropriate to make sure that you're doing  
17 it consistently with the policies of the  
18 place where you work.

19 Q Now, I have a question, Dr.  
20 MacDonald. Have any of the other directors  
21 actually approached anyone, that you know  
22 of, about recording?

23 A No. We would be happy to have a  
24 discussion. Maybe recording is the right  
25 thing to be doing. Maybe we should be doing



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2 it for all of our evaluations. But the  
3 point is, it should not be done at the  
4 discretion of individuals without a general  
5 awareness of what we're doing in the  
6 clinics.

7 Q I just have a question.

8 Did anyone afford Dr. Kaye -- did  
9 anyone afford Dr. Kaye the luxury of having  
10 a discussion about whether or not this was  
11 the way to go before writing her up?

12 A That's exactly what would be  
13 prompted by her bringing it to the attention  
14 of her supervisor, which it is judgment  
15 issue to do that without doing such.

16 Q But she wasn't given that  
17 opportunity. Now you're saying, oh, we  
18 could have discussed it had she not done it  
19 first, but because she did it first, because  
20 after all these years on occasion, without  
21 any reprisal, she may have recorded, but on  
22 this particular occasion it was determined  
23 that it was problematic, right?

24 MS. CANFIELD: Objection.

25 Misconstrues the facts. You can

1 R. MACDONALD

2 answer if you're able.

3 Q Do you recall how it came to be  
4 that management learned that Dr. Kaye  
5 actually recorded the Jose Gonzalez exam in  
6 the first place?

7 A I don't recall. I think it was  
8 related to testimony, some testimony that  
9 she gave.

10 Q Okay. Was it the contra version  
11 hearing of Mr. Gonzalez, do you recall?

12 A I don't know specifically.

13 Q Do you know what a contra version  
14 hearing is?

15 A Yes.

16 Q Okay. What is it?

17 A It's an opportunity to  
18 cross-examine the evaluators, if there's  
19 dispute about the conclusions that they come  
20 to.

21 Q In that instance, wouldn't a  
22 recorded exam be helpful to CHS because it  
23 at least shows the methodology that was used  
24 by the examiner, more so than the  
25 recollection of the examiner?

1 R. MACDONALD

2 MS. CANFIELD: Objection to  
3 form. You can answer.

4 A Again, it's about the question of  
5 judgment and operating with respect for  
6 other people in your work place.

7 Q But the question --

8 A Not about the narrow question of  
9 whether recording is the right thing to do  
10 in these evaluations. Which maybe it is.

11 Q I'm asking you a question. The  
12 best evidence, and this just using common  
13 sense, because you're trying to appeal  
14 common sense on your end, I'm expecting the  
15 same type of, I guess, latitude on mine,  
16 right?

17 You're saying to me, I'm asking  
18 you, Dr. Kaye is at contra version hearing,  
19 where one of her rulings or one of her  
20 evaluations is subject to being questioned,  
21 right. And at the core of the contra  
22 version hearing is the integrity of the  
23 process and the validity of the exam; am I  
24 right?

25 A Yes.

1 R. MACDONALD

2 Q And instead of Dr. Kaye getting on  
3 the stand and just saying, this is what I'm  
4 doing and these are my notes, instead she  
5 has a recording of the exam basically  
6 documenting, capturing specifically in  
7 realtime what happened, right? With a  
8 recording; isn't that what happened?

9 A Yes.

10 Q So you have a recording versus  
11 Dr. Kaye talking about, well, I took these  
12 notes, I reached these determinations, and  
13 you have that versus a recording. And  
14 you're telling me that Dr. Kaye's recording  
15 is problematic; am I right?

16 A Well, it sounds to me like you're  
17 arguing that every evaluation Dr. Kaye does  
18 should be recorded.

19 Q I didn't say that at all.

20 A How do you know which one is going  
21 to be controverted?

22 Q Well, in this instance Dr. Kaye  
23 made a determination that this was a high  
24 profile case, this was an EMT killer case,  
25 and that the guy was thought disorder.

1 R. MACDONALD

2 Do you recall that?

3 MS. CANFIELD: Objection to  
4 form. You can answer.

5 A No.

6 Q Did you read any of the  
7 transcripts associated with Mr. Gonzalez's  
8 detention or the contra version hearing?

9 A No.

10 Q So you know nothing about  
11 Mr. Gonzalez at all?

12 A No.

13 Q You don't recall there being an  
14 EMT killer in New York City at that time?

15 MS. CANFIELD: Objection to  
16 form. You can answer.

17 A I am aware of such a thing from  
18 the news media.

19 Q Right. And this is the same  
20 person. He's one in the same.

21 So if it's in the news media,  
22 would it be fair to say that this was a high  
23 profile case?

24 MS. CANFIELD: Objection to  
25 form. You can answer.

1 R. MACDONALD

2 A Again, I don't -- sure. Some  
3 people would call it a high profile case.

4 Q Right. And if it's a high profile  
5 case, wouldn't it stand to reason that  
6 Dr. Kaye or someone in her position would  
7 want to be more careful in actually how she  
8 went about evaluating this individual?

9 A I think you would want to take the  
10 same amount of care for every evaluation  
11 that you do. And if there's a value to  
12 recording evaluations, that's something that  
13 should be discussed, and there should be an  
14 infrastructure to support that in the  
15 clinics.

16 Q Do you know for a fact that  
17 there's no value in recording examinations,  
18 Dr. MacDonald?

19 A No. But I know for a fact that if  
20 there is a value, then we should talk  
21 through it as partners who work together to  
22 do this work in those clinics.

23 Q Now, the implications for  
24 discipline for a doctor are huge; am I  
25 right?

1 R. MACDONALD

2 MS. CANFIELD: Objection to  
3 form. You can answer.

4 A It depends on the nature of the  
5 discipline.

6 Q In the instance Dr. Kaye was  
7 disciplined for recording this examination,  
8 right?

9 MS. CANFIELD: Objection to  
10 form. You can answer.

11 Q You said yes, right?

12 A That's my understanding, yes.

13 Q And as a doctor, this is not  
14 something that you would want in your  
15 personnel file; am I right?

16 A Correct.

17 Q Now, why wouldn't you want that in  
18 your personnel file, Dr. MacDonald?

19 A Well, there are certain types of  
20 disciplinary proceedings that have to be  
21 reported to the Office of the Professions.

22 Q Right. I think we talked about  
23 that earlier.

24 A Yes.

25 Q And this would impact your ability

1 R. MACDONALD

2 to practice medicine; am I right?

3 A Well, I would say it's not clear  
4 to me that the discipline that we're talking  
5 about here would constitute one that needs  
6 to be reported to the Office of the  
7 Professions.

8 Q How do you make a determination of  
9 what needs to be reported and what doesn't  
10 need to be reported?

11 A Again, in consultation with HR  
12 professionals.

13 Q But what about Dr. Kaye, she  
14 doesn't have the luxury of HR questions at  
15 her disposal, right? And she's trying to  
16 apply for medical licenses and god knows  
17 what else, right?

18 How does she make a determination  
19 as to what should be reported and what  
20 shouldn't?

21 MS. CANFIELD: Objection to  
22 form. You can answer.

23 A I don't think it's -- well, I  
24 don't know the answer to that question. She  
25 could talk to her union representative, she



1 R. MACDONALD

2 could talk to an attorney. She could read  
3 the language of the question, which I don't  
4 think requires discipline like this to be  
5 reported. There are many ways she could get  
6 that information.

7 Q Now, Dr. Kaye is being disciplined  
8 for something where there was no policy that  
9 she was in breach of in the first place;  
10 would you agree with me?

11 MS. CANFIELD: Objection to  
12 form. You can answer.

13 A Yes. There was no policy  
14 prohibiting that at the time.

15 Q And she was disciplined,  
16 regardless?

17 MS. CANFIELD: Objection to  
18 form. You can answer.

19 A I think I explained the rational  
20 for that, but, yes.

21 Q So now, I'm going show you what's  
22 going to be marked as Plaintiff's Exhibit  
23 18.

24 (Whereupon, 730CPL Statute was  
25 marked as Plaintiff's Exhibit 18

1 R. MACDONALD  
2 for identification as of this  
3 date.)

4 MS. HAGAN: Now, Plaintiff's  
5 Exhibit 18 isn't Bate stamped, but  
6 it was produced today, Ms. Canfield.  
7 And this is the 730CPL statute?

8 THE WITNESS: May I request  
9 that we take a short break when we  
10 have a chance?

11 MS. HAGAN: Let's get through  
12 this and then --

13 MS. CANFIELD: Is this the 730  
14 exam?

15 MS. HAGAN: This is 730 CPL,  
16 the CPLR 730 statute.

17 MS. CANFIELD: In the criminal  
18 law handbook?

19 MS. HAGAN: Yes.

20 MS. CANFIELD: Okay. Thank  
21 you. If it would be possible to  
22 take a quick break after questions  
23 on this document, that would be  
24 great.

25 MS. HAGAN: Sure.

1 R. MACDONALD

2 Q Now, this is Plaintiff's Exhibit  
3 18. And it's a 730.20 fitness to proceed  
4 generally. You see that, right?

5 Underlined here -- well, do you  
6 want me to read the whole paragraph or could  
7 we focus on the portions that are  
8 underlined?

9 A We can focus on the underlined  
10 portions.

11 Q So just to have context. "Upon  
12 receipt of an examination order, director  
13 must designate two qualified psychiatric  
14 examiners, of whom he may be one, to examine  
15 the defendant to determine if he is an  
16 incapacitated person." That's general,  
17 right? You understand that, right?

18 A Yes.

19 Q "In conducting their examination,  
20 the psychiatric examiners may employ any  
21 method which is accepted by the medical  
22 profession for the examination of persons  
23 alleged to be mentally ill or mentally  
24 defective."

25 You see that, right?

1 R. MACDONALD

2 A Yes.

3 Q Now, how does Dr. Kaye's behavior  
4 or recording of the exam deviate from this  
5 particular aspect of the CPL order?

6 MS. CANFIELD: Objection to  
7 form. You can answer.

8 A I don't think the discipline was  
9 intended to imply that she had violated this  
10 provision of the law. Again, it was really  
11 about judgment. Just because something is  
12 legal or even accepted, to do it ad hoc in  
13 certain cases without telling your  
14 supervisor or anyone else showed a lack of  
15 judgment.

16 MS. HAGAN: Why don't we take  
17 a break.

18 MS. CANFIELD: Ten minutes?

19 MS. HAGAN: Okay. Sure.

20 (Whereupon, a recess was taken  
21 from 4:13 p.m. to 4:24 p.m.)

22 Q At any point -- I want to ask, did  
23 it come to your attention that Dr. Kaye was  
24 being accused of stealing Dr. Jain's  
25 handwritten notes?

1 R. MACDONALD

2 A No. I don't think I heard about  
3 that.

4 Q So you never heard about any  
5 dispute between the two of you about his  
6 handwritten notes at any point?

7 A Not that I recall, no.

8 Q Do you know what Dr. Jain's  
9 obligations would be as far as keeping his  
10 handwritten notes when he conducted exams  
11 would be?

12 A No. I'm not familiar.

13 Q At any point did Dr. Kaye complain  
14 about Dr. Mundy being designated her  
15 supervisor and he should not have been?

16 A I don't think I remember that  
17 either.

18 Q Dr. Mundy was never Dr. Kaye's  
19 supervisor; is that right?

20 A Correct.

21 Q And you don't recall there being  
22 issues with him being listed as her  
23 supervisor in PeopleSoft?

24 A No. I don't think I knew about  
25 that specifically. Sometimes there were

1 R. MACDONALD

2 errors in PeopleSoft that needed to be  
3 fixed.

4 Q Did there ever come a time where  
5 Dr. Kaye complained about Dr. Mundy being  
6 CC'd on emails containing her private  
7 medical information?

8 A I don't think I was aware of that  
9 either.

10 Q I'm going to show you what would  
11 be marked as Plaintiff's Exhibit 17.

12 MS. CANFIELD: I think  
13 it's 19, if you're introducing  
14 another exhibit.

15 (A discussion was held off the record.)

16 (Whereupon, Email (NYC\_962-963)  
17 was marked as Plaintiff's  
18 Exhibit 19 for identification as  
19 of this date.)

20 Q Now, Exhibit 19 bears the Bate  
21 Stamp series NYC962 through 963. And this  
22 was with the October production.

23 MS. CANFIELD: Production.

24 Thank you.

25 MS. HAGAN: That's the best

1 R. MACDONALD

2 way I can describe it. Sorry.

3 MS. CANFIELD: I know what you  
4 mean.

5 MS. HAGAN: Doing my best  
6 here.

7 MS. CANFIELD: That's all I  
8 ask.

9 Q So here you have -- I'm going to  
10 start at the bottom so that you get an  
11 opportunity to review it, Dr. MacDonald.

12 A Yeah.

13 Q So this is an email from Dr. Mundy  
14 and it seems like it's HR system admin and  
15 is Dr. Kaye and Denise Dudley.

16 Do you recall who Denise Dudley  
17 is?

18 A No.

19 Q This HR system administration, is  
20 that like you and a bunch of other people?  
21 Who is that?

22 A It's not me. It's an email  
23 address box used by human resources.

24 Q So then Dr. Mundy -- I guess it  
25 really starts with this HR admin place,

1 R. MACDONALD

2 right. It starts there. It's to Dr. Kaye  
3 and Dr. Mundy and Denise Dudley. And it  
4 says, subject is expiring license  
5 certification expiring four weeks.

6 You see that, right?

7 A Yes.

8 Q And it says, "Dear Melissa Kaye,  
9 our records indicate that your license  
10 and/or certification drug enforcement admin  
11 will expire on December 31st, 2018. Out of  
12 date license information may result in  
13 termination of access and disqualify you  
14 from continued interaction with patients.  
15 Please submit your updated document to the  
16 appropriate party for recertification.  
17 Failure to comply, blah, blah."

18 You see this, right?

19 A Yes.

20 Q Now, I'm going to go up to  
21 Dr. Mundy responding to this email. And  
22 he's saying, "Please remove me from future  
23 emails not addressed to clinicians reporting  
24 to me, and Dr. Kaye does not report to me,  
25 and I do not know her licensing status."



1 R. MACDONALD

2 Right?

3 A Yes.

4 Q Now, Dr. Kaye responds to Dr.  
5 Ford, "Dr. Mundy continues to be incorrectly  
6 copied on emails related on my personnel  
7 matters at CHS." Right?

8 Now, you are not on this email  
9 yet. You see this, right? But Dr. Jain is  
10 here, right?

11 A Yes.

12 Q "In September with CHS  
13 occupational health sent HIPPA protected  
14 information about me to Dr. Mundy in error.  
15 I was assured by Dr. Jain that this CHS HR  
16 error was corrected, but apparently it has  
17 not been resolved."

18 You see that, right?

19 A Yes.

20 Q "In addition, CHS incorrectly  
21 categorized me as a part-time employee of  
22 the Manhattan court clinic. As a result,  
23 central office was misinformed by CHS in  
24 listing me as .67 a full-time employee.  
25 This caused me to receive a partial payment

1 R. MACDONALD

2 of a full bonus due to me." And remember  
3 we -- I asked about the retention bonus, do  
4 you remember that now?

5 A I remember you asked me about it.

6 Q Right. Now, did you have any part  
7 in rectifying or addressing the issue with  
8 Dr. Kaye only receiving a portion of the  
9 retention bonus?

10 A No.

11 Q Did you have any part in  
12 addressing Dr. Kaye's salary disparity  
13 issues?

14 A No.

15 Q I know at one point you said on  
16 several occasions that the disparity issue  
17 was something that involved Bellevue, but  
18 Dr. Kaye continued to work for CHS after the  
19 Bellevue; am I right?

20 A Yes.

21 Q Were steps taken to ensure that  
22 Dr. Kaye's salary was comparable to the  
23 other directors at the other clinics?

24 A My understanding is that the --  
25 again, as I mentioned, the issue that was

1 R. MACDONALD

2 directly raised to Dr. Yang and was  
3 primarily handled by Dr. Ford, Mr. Wangel,  
4 Dr. Yang, my rough understanding is that the  
5 other directors who had conversation that  
6 was hired were managers.

7 In other words, they were not  
8 unionized positions. And such a position  
9 was offered, but I don't -- I wasn't  
10 intimately involved in the resolution of  
11 that issue, as we discussed previously.

12 Q Were there steps taken to ensure  
13 that Dr. Kaye was paid the equal amount --  
14 the same amount of money as the directors at  
15 the other court clinics?

16 A I think her employment was  
17 different, in that she remained in the  
18 union. So the pay may not have been equal  
19 because you can't really compare a unionized  
20 position to a managerial position. That  
21 doesn't have union benefits or  
22 representation.

23 Q Did Dr. Kaye perform the same  
24 functions as the other court clinic  
25 directors?

1 R. MACDONALD

2 A Again, I don't know what the  
3 particular limitations of being in one title  
4 versus the other would be. But sometimes  
5 there are limitations about whether she  
6 could be involved in remediation for other  
7 staff and the like.

8 So I don't know if her role was  
9 different because she was -- had preferred  
10 to remain in that unionized title.

11 Q Would the remediation be an issue  
12 not because of her union status, but because  
13 she would be an evaluator, and there would  
14 be a question of whether or not the  
15 evaluator was actually independent, rather  
16 than her being in the union?

17 MS. CANFIELD: Objection to  
18 form. You can answer. If that's  
19 the question.

20 A No.

21 Q Is there a question of dual agency  
22 if your supervisor is actually a  
23 co-evaluator, to your understanding?

24 A In an individual evaluation?

25 Q The 730 examination, you testified

1 R. MACDONALD

2 earlier that there are two examiners; am I  
3 right?

4 A Yes.

5 Q Is it your understanding that the  
6 examiners in their 730 capacity act  
7 independently of each other?

8 A Yes.

9 Q Would it be problematic under the  
10 concept of dual agency or dual loyalty or  
11 whatever nomenclature you assigned to this,  
12 would it be problematic that Dr. Kaye was  
13 acting in a supervisory capacity with the  
14 other evaluator?

15 A Not necessarily.

16 Q So why wouldn't it be an issue?

17 A Because it would only be an issue  
18 if there was some implicit expectation about  
19 the results of the examination. And the  
20 supervisor who's administering a court  
21 clinic understands that the group together,  
22 the team, is working to towards independent  
23 evaluation.

24 Q So what are you basing this  
25 opinion on, Dr. MacDonald, that a

1 R. MACDONALD

2 co-evaluator could conceptually supervise  
3 their co-evaluator?

4 A So I'm -- not with regard to the  
5 specific content of that case, but do they  
6 have to be absolutely at the same level in  
7 the organizational chart, no.

8 Q The question is, could Dr. Kaye  
9 conceivably be, let's say, for example,  
10 there was an issue that arose with  
11 Dr. Brayton and Dr. Kaye, during the course  
12 of Dr. Brayton's employment.

13 Were you aware of that?

14 A It sounds vaguely familiar to me.

15 Q At some point Dr. Kaye raised  
16 concerns about supervising Dr. Brayton  
17 because she and Dr. Brayton were doing 730  
18 examinations together. Do you remember  
19 that?

20 A I don't remember that specific  
21 concern being raised.

22 Q It is your testimony today that  
23 Dr. Kaye could have supervised Dr. Brayton  
24 and not compromised the integrity of the 730  
25 examination process; is that right?

1 R. MACDONALD

2 A I don't know the specific  
3 situation there. What I'm saying is that  
4 supervisors can participate as evaluators  
5 independently with evaluators that they  
6 supervise at times. And that that is not  
7 inherently a conflict of interest.

8 Q The question I have for you is,  
9 what is the basis of your opinion? Where  
10 did you get that?

11 A It's my understanding from  
12 supervising at the clinic for many years.

13 Q Did you read something that said  
14 that this is permissible, Dr. MacDonald?

15 A No.

16 Q Do you think that what you just  
17 said comports with the whole concept of dual  
18 agency that we have been talking about off  
19 and on today?

20 A Yes.

21 Q How does it comport with that?

22 MS. CANFIELD: Objection.

23 Asked and answered. You can answer  
24 again.

25 A It comports with it because there

1 R. MACDONALD

2 is no understanding or ability to remove all  
3 competing interest from all evaluations or  
4 all clinical encounters.

5 That is not the standard that we  
6 aspire to. The standard is that we  
7 understand them, that we manage them, that  
8 we minimize them, and that we have an  
9 awareness of what is and is not appropriate  
10 in dealing with those.

11 Q Would it be your understanding  
12 that the examiners are independent?

13 A Yes. Their evaluations are  
14 independent.

15 Q Would it also be your  
16 understanding that the evaluators avoid  
17 having any undue influence on each other in  
18 order to reach their independent  
19 evaluations?

20 A With regard to a specific  
21 evaluation, yes.

22 Q Right. I'm going to leave it at  
23 that.

24 Dr. Kaye goes on and she says that  
25 she's concerned about her personal data



1 R. MACDONALD

2 continues to be mishandled.

3 Now, at any point did you look  
4 into Dr. Kaye's allegations about fishing  
5 emails, that she was referencing?

6 A No.

7 MS. CANFIELD: Objection to  
8 form. You can answer.

9 Q And are you aware of what fishing  
10 emails are?

11 A Yes.

12 Q What are they?

13 A It's emails attempting to get  
14 people's personal information through a  
15 scam.

16 Q Would you say that a fishing email  
17 that was circulated within the confines of  
18 HHC would be a serious issue?

19 MS. CANFIELD: Objection to  
20 form. You can answer.

21 A Yeah. I mean, fishing emails are  
22 concerns to organizations and I know there  
23 are policies related to IT where those  
24 emails are supposed to be recorded and  
25 identified for IT purposes.

1 R. MACDONALD

2 Q Dr. Kaye did report the email. Is  
3 IT amongst any of these email recipients  
4 here, from what you've seen so far?

5 MS. CANFIELD: Objection to  
6 form. Go ahead. You can answer.

7 A I'm not sure I understand the  
8 question. Are you suggesting that this is  
9 being proposed to be a fishing email?

10 Q Well, she says that -- okay.  
11 Let's keep going.

12 Dr. Yang responds, and you're on  
13 this particular email, right, and she says,  
14 "What's going on. It needs to be fixed.  
15 Let me know if you need me." Right.

16 This is regarding the expiring  
17 license certification, right?

18 A Yeah.

19 Q And then Jessica Laboy says to you  
20 and Dr. Yang and Dr. Ford, that PeopleSoft  
21 has her supervisor as Daniel Mundy. Looking  
22 into why her supervisor was changed from Dr.  
23 Jain.

24 Now, did you have any further  
25 discussion with Ms. Laboy regarding why her

1 R. MACDONALD

2 supervisor was changed?

3 A Not that I recall.

4 Q Who would have had the ability to  
5 change Dr. Kaye's supervisor in PeopleSoft?

6 A I don't know.

7 Q Do you have access to PeopleSoft,  
8 Dr. MacDonald?

9 A I can log in --

10 MS. CANFIELD: Objection to  
11 form. Go ahead.

12 A I can log in to PeopleSoft. I  
13 don't know how to assign people's  
14 supervisor.

15 Q Who knows how to assign people's  
16 supervisor?

17 A I don't know. Probably HR.

18 Q So someone in Ms. Laboy's camp  
19 would have been able to change Dr. Kaye's  
20 supervisor; is that right?

21 A Yes.

22 Q Would it have been Ms. Laboy  
23 herself?

24 A Again, I don't know.

25 Q I'm going to show what's going to

1 R. MACDONALD

2 be marked as Plaintiff's Exhibit 20.

3 Plaintiff's Exhibit 20 bears the Bate Stamp  
4 series NYC1285 to 1286.

5 (Whereupon, Email  
6 (NYC\_1285-1286) was marked as  
7 Plaintiff's Exhibit 20 for  
8 identification as of this date.)

9 MS. CANFIELD: Is this in that  
10 October production?

11 MS. HAGAN: Yes.

12 Q I'm going to scroll down to the  
13 bottom. The first email is from Ms. Mendez  
14 to Dr. Kaye. It CCs Dr. Mundy, Jain, Donna  
15 Fong, Colleen Barrow and CHS Payroll.

16 Do you see that?

17 A Yes.

18 Q And she says, "Melissa, attached  
19 please find an approval regarding your  
20 request for intermittent leave of absence to  
21 care for your ill family member for any time  
22 sheets submitted without proper code, please  
23 complete the attached employee time sheet  
24 changes data entry forms submit directly to  
25 payroll. Thank you."

1 R. MACDONALD

2 You see that, right?

3 A Yes.

4 Q So then Mundy is on this email  
5 again. This is February, right?

6 A Um-hmm. Yes.

7 Q Again, Dr. Kaye then responds to  
8 Mr. Wangel, Dr. Ford, Dr. Jain, Ms. Mendez,  
9 Mary Fritz, Dr. Yang and Patrick Campese,  
10 right, and Dr. Mundy.

11 And she says that, Mr. Wangel,  
12 first, let me thank HHC for completing the  
13 processing of my FMLA today. This is  
14 especially difficult time for me and my  
15 family. However, I am also writing to  
16 express my ongoing concern about the  
17 repeated HIPPA and privacy violations that  
18 have transpired and have continued after  
19 the FMLA notification process. On at least  
20 two prior occasions, Dr. Daniel Mundy was  
21 copied on emails that contained my personnel  
22 and medical information. I initially  
23 contacted my supervisor Dr. Jain in  
24 September 2018, who indicated that he had  
25 resolved the matter. However, when it

1 R. MACDONALD

2 happened again in December 2018, I contacted  
3 you and other HHC management about this  
4 violation and you indicated that it had been  
5 resolved in PeopleSoft." Right?

6 And she goes about how there have  
7 been repeated violations of HIPPA and her  
8 privacy rights and she feels compelled to  
9 report this matter to HHC corporate  
10 compliance. Right?

11 A Yes.

12 Q Now, at any point, are you aware  
13 of corporate compliance looking into this  
14 continued breach of her personnel  
15 information?

16 A No. I'm not aware of that.

17 Q Did corporate compliance ever  
18 reach out to you regarding this particular  
19 issue?

20 A No.

21 Q So then Dr. Yang responds to  
22 Mr. Wangel and Ms. Laboy, Dr. Ford and  
23 yourself, right. And she says, "Is this  
24 Yvette or Kevin." Right.

25 Now, who is Yvette?

1 R. MACDONALD

2 A Yvette is the head of H&H HR.

3 Q And Kevin is Mr. Morazo, who we  
4 talked about earlier, right?

5 A I don't know for sure.

6 Q Well, then Dr. Yang asks  
7 Ms. Laboy, you're CC'd at this point again,  
8 "Can you or Jonathan send me email you last  
9 sent asking this to be fixed," right?

10 A Yes.

11 Q Now, at this point, did you engage  
12 or get involved with trying to rectify the  
13 situation?

14 A No. Again, this is clearly an HR  
15 issue, and the to line is Jessica Laboy.  
16 I'm included here for awareness.

17 Q Okay. Ms. Laboy claims this  
18 fixed, right, again?

19 A Yes.

20 Q "John should have emails notifying  
21 Maria to remove Mundy."

22 Did you ask to see these emails  
23 yourself, like Ms. yang did?

24 A No.

25 Q Why not?

1 R. MACDONALD

2 A Because Ms. Yang is looking into  
3 it. These are my colleagues in HR who are  
4 attesting that they performed this basic HR  
5 function. She's their supervisor. She's  
6 checking into it. It should have been done.

7 Q So you're saying that it should  
8 have been done. You didn't take any further  
9 steps to look into whether or not it  
10 happened, right?

11 A Yes.

12 Q Now, were you ever aware of a  
13 project that was being conducted by HR  
14 involving, I guess, various employee's  
15 personnel files?

16 A No.

17 Q So was it inaccurate for  
18 Ms. Swenson to tell Dr. Kaye that there was  
19 a project?

20 MS. CANFIELD: Objection to  
21 form. You can answer.

22 A I don't know what project you're  
23 referring to.

24 Q Well, I mentioned to you earlier  
25 that Dr. Kaye complained of fishing emails,



1 R. MACDONALD

2 right?

3 A Yes.

4 Q And I mentioned to you that she  
5 complained about them, and there were  
6 questions about what steps had been taken to  
7 actually address the issue.

8 I'm going to direct you -- and  
9 this wasn't produced, this is from one of  
10 the earlier depositions, Ms. Canfield. It  
11 bears the Bate Stamp series NYC2629, 2630.  
12 And I'm going to share the screen.

13 (Whereupon, Email  
14 (NYC\_2629-2630) was marked as  
15 Plaintiff's Exhibit 21 for  
16 identification as of this date.)

17 MS. CANFIELD: Do you know  
18 which deposition this was produced?

19 MS. HAGAN: This should be at  
20 Mr. Wangel's deposition.

21 Q I'm going to start at the bottom.  
22 This is from Teleakie Parker. Do you know  
23 who Teleakie Parker is?

24 A The name is familiar to me, but I  
25 don't know the exact role.

1 R. MACDONALD

2 Q Teleakie Parker is assistant  
3 coordinating manager of operations. You're  
4 familiar with that, right?

5 A I am -- that doesn't really -- I'm  
6 familiar with that title within operations,  
7 but I don't know exactly what that person's  
8 role was.

9 Q So there's an email, March 7,  
10 2019, and it says audit, Melissa Kaye.

11 Were you aware that there was an  
12 audit taking place at HHC regarding various  
13 files at that time?

14 A No.

15 Q "Hi. While conducting an audit it  
16 came across the following documents are  
17 missing. Please review the list below.  
18 The required documents you must completely  
19 submit." Right?

20 Now, as a doctor yourself,  
21 Dr. MacDonald, would you have -- would these  
22 documents have -- would you have produced  
23 these documents yourself or keep them up to  
24 date?

25 A Yes.

1 R. MACDONALD

2 Q And she says, "Please provide me  
3 with the following for credentialing, Social  
4 Security and date of birth." Right.

5 Now, would you find this to be odd  
6 considering that Dr. Kaye and you had been  
7 working at CHS, HHC for a numbers of years,  
8 at least the request of her Social Security  
9 number and date of birth?

10 A Yeah. I could see how that would  
11 be perceived as odd.

12 Q So Dr. Kaye express concerned,  
13 right?

14 A Yeah.

15 Q So I'm going to go up here.  
16 Dr. Kaye to Ms. Parker, she CCs Dr. Jain,  
17 Dr. Ford and a number of other people. She  
18 explains to Ms. Parker that she's a  
19 credentialed position in H&H, and she's been  
20 as much since 1999. And she basically  
21 says -- well, I'll let you continue to read  
22 it.

23 Important this first paragraph  
24 that says, "We were to told that the  
25 credentialing status of Bellevue court

1 R. MACDONALD

2 clinic employees would roll over to CHS. I  
3 was never informed that I would be required  
4 to recredential at CHS." Right.

5 "Prior to your email, the only  
6 credential and issue brought to my attention  
7 was in December 2018. That was an email  
8 from HR admin regarding the pending  
9 expiration of my DEA license. I provided an  
10 updated DEA certificate prior to its  
11 expiration -- Bellevue medical's staff  
12 office and Dr. Jain, supervisor, CHS, for a  
13 copy of those emails. Per below, I am now  
14 being informed by CHS that much of my  
15 credentialing employment information is  
16 missing, including basic demographic  
17 information such as my date of birth and  
18 Social Security number. This seems  
19 implausible and is a serious matter that  
20 needs clarification." And then she explains  
21 further.

22 When was this brought to your  
23 attention, or do you remember?

24 A I don't recall.

25 Q At any point did you take any

1 R. MACDONALD

2 steps to address Dr. Kaye's concerns about  
3 the fishing emails?

4 MS. CANFIELD: Objection to  
5 form. You can answer.

6 A I don't remember this being raised  
7 to me directly.

8 Q Let's see if we can figure out one  
9 of these if we can find one of these emails.  
10 I'm sure you are on it.

11 Now, I'm going to show you HR  
12 payroll audit report. And for purposes of  
13 this deposition, it's under the Wangel  
14 deposition. And bears the Bate Stamp series  
15 NYC2159, 2160 and 2161.

16 (Whereupon, Email  
17 (NYC\_2160-2161) was marked as  
18 Plaintiff's Exhibit 22 for  
19 identification as of this date.)

20 Q At any point were you aware of an  
21 HR audit report?

22 A No.

23 Q And this will be Exhibit 22.

24 Have you seen anything like this  
25 since you've been employed at CHS?

1 R. MACDONALD

2 A No.

3 Q Would you know of any reason why  
4 this would actually take place, that an HR  
5 audit report would be ordered in the first  
6 place?

7 MS. CANFIELD: I'm going to  
8 object to the characterization that  
9 this is an audit report. You can  
10 respond.

11 Q Well, according to the title of  
12 the document, it says, HR payroll audit  
13 report. Do you see that, Dr. MacDonald?

14 A I see those words up top, yes.

15 Q Right. Have you seen anything  
16 like this during the course of your  
17 employment at H&H?

18 A No.

19 Q At any point did anybody explain  
20 to you that this has taken place?

21 A No.

22 Q Here you have an email from CHS  
23 personal actions, right. Are you in this  
24 administrative group?

25 A No. Not that I am aware of.

1 R. MACDONALD

2 Q "Attached you will find the  
3 supporting documents for the HR payroll  
4 audit report, October 30."

5 Since you've been at HHC, have you  
6 ever asked for an HR payroll audit report  
7 any other employee?

8 A For no employee, including  
9 Dr. Kaye.

10 Q Do you know why this would take  
11 place?

12 A No.

13 MS. CANFIELD: Can you tell me  
14 what the date was of the email that  
15 Dr. Kaye sent to Mr. Wangel that's  
16 Exhibit P21.

17 MS. HAGAN: Are you talking  
18 about 21?

19 MS. CANFIELD: Yeah. What is  
20 the date on that email.

21 MS. HAGAN: I think that would  
22 be March 8, 2019. We're going  
23 forward now to July 3, 2019.

24 MS. CANFIELD: Yeah. I'm  
25 trying to get -- the audit report

1 R. MACDONALD

2 was dated December 10, 2018. So  
3 three months earlier.

4 MS. HAGAN: Well,  
5 March 7, 2019 she emails -- I mean,  
6 Ms. Parker emails Dr. Kaye asking  
7 for all these documents.

8 MS. CANFIELD: Okay. Yeah.  
9 Thank you.

10 Q Now, are you on the spam admin  
11 group, Dr. MacDonald?

12 A No.

13 MS. CANFIELD: Is this another  
14 exhibit, Ms. Hagan?

15 MS. HAGAN: I'm just asking  
16 some questions. Because I just  
17 wanted to make sure that it makes  
18 sense to go through this particular  
19 email. But he's not.

20 Q It's your testimony today that you  
21 weren't really aware of what happened with  
22 the audit with Dr. Kaye?

23 A Correct.

24 Q And at no point did Dr. Ford talk  
25 to you about the email audit?



1 R. MACDONALD

2 A Correct.

3 Q So I have some questions regarding  
4 the staffing at the Bronx court clinic.

5 Is it your understanding that  
6 evaluations could be done without the  
7 presence of two evaluators?

8 MS. CANFIELD: Objection to  
9 form. Asked and answered. You can  
10 answer again.

11 A No.

12 Q You said no, right?

13 A Correct.

14 Q Now, at some point Dr. Kaye asked  
15 if she could perform -- as a reasonable  
16 accommodation, she could perform the exam  
17 remotely. Do you recall us talking about  
18 that earlier?

19 A I remember that was part of the  
20 request, yes.

21 Q Now, that request to do so was  
22 denied. Do you recall why?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A No.

1 R. MACDONALD

2 Q Dr. Kaye requested to do some of  
3 the exams from -- to write direct exams at  
4 home. Do you recall why she was denied the  
5 right to do that?

6 A No.

7 Q Now, at this time the 730 exams  
8 are being administered remotely; am I right?

9 A Yes. For the most part.

10 Q And examiners are actually -- not  
11 only are they administering exams remotely,  
12 but they are also writing the reports at  
13 home remotely; am I right?

14 A At times, yes.

15 Q Why is it permissible now versus  
16 when Dr. Kaye was actually employed at the  
17 court clinics?

18 A Probably the same reason we're  
19 having this deposition on Zoom versus doing  
20 it in person.

21 Q If it's inevitable now, right, and  
22 it is doable now, why couldn't it have been  
23 done before, when Dr. Kaye asked for it?

24 A I don't know.

25 Q At any point did Dr. Kaye get

1 R. MACDONALD

2 docked for taking her board examinations?

3 MS. CANFIELD: Objection to

4 form. You can answer.

5 A Can you repeat the question.

6 Q Was there a time when Dr. Kaye was

7 docked pay when she took her board

8 examinations?

9 A I vaguely remember that that  
10 occurred because she coded for a board  
11 examination that was not a requirement for  
12 her work in the clinic. If I recall  
13 correctly.

14 Q Were any of the other doctors  
15 docked pay for taking board certification  
16 examinations?

17 MS. CANFIELD: Objection to  
18 form. Characterizing as docked.  
19 You can answer.

20 A I'm not aware of anyone else  
21 taking a board certification exam that was  
22 unrelated to their work.

23 Q Is that your opinion, that it was  
24 unrelated to her work?

25 A That was my understanding of why

1 R. MACDONALD

2 it wasn't compensated.

3 Q Do you know how that situation was  
4 resolved?

5 A No.

6 Q Did you intervene?

7 A No.

8 Q So I'm going to show you some  
9 documents. At least one document. And this  
10 will be Plaintiff's Exhibit 23. And it  
11 bears the Bate Stamp series NYC960 to 961.

12 MS. CANFIELD: This is in that  
13 October production?

14 MS. HAGAN: Yes.

15 (Whereupon, Email (NYC\_960-961)  
16 was marked as Plaintiff's  
17 Exhibit 23 for identification as  
18 of this date.)

19 Q I'm going to scroll down to the  
20 bottom. And it's from -- the first email is  
21 from you, Dr. MacDonald. And it says, "I  
22 supported the education leave for these.  
23 It's once every ten years and it's in CHS'  
24 best interest."

25 Do you see that?

1 R. MACDONALD

2 A Yes.

3 Q And then Mr. Wangel says, "Just so  
4 we're on the same page, H&H charges to  
5 education on the house, no balance charge  
6 and PAGNY charges to CME balance."

7 You see that, right?

8 A Yes.

9 Q And then you verify that. And you  
10 said, "Please see below. Talk before  
11 responding to Dr. Kaye. Let me know." And  
12 you're going back and forth, right?

13 A Yes.

14 Q So you address this issue.

15 No, Dr. Kaye sat for examination  
16 for child and adolescence psychiatry. Do  
17 you remember that?

18 A Yes. That was my understanding  
19 subsequent.

20 Q Now, how is it that that wasn't  
21 related to her current job?

22 A Well, the evaluation is done in a  
23 clinic of adults.

24 Q Would it be fair to say that a lot  
25 of the inmates had problems as children as

1 R. MACDONALD

2 well?

3 MS. CANFIELD: Objection to  
4 form.

5 A Yes.

6 Q You said yes, right?

7 A Yes.

8 Q Wouldn't having that background be  
9 helpful to the court clinics because that  
10 would provide her with an additional level  
11 of insight?

12 A Possibly.

13 Q Now, I had some questions  
14 regarding the work stoppage at the court  
15 clinic.

16 Did there come a time where the  
17 Bronx court clinic was not seeing 730  
18 examinations, the 730 exams?

19 MS. CANFIELD: Objection as to  
20 the form of the question. You can  
21 answer.

22 A I think we discussed this. I  
23 don't remember the exact time frames.  
24 Certainly after COVID there was a period of  
25 time when none of the clinics were seeing

1 R. MACDONALD

2 exams. I think you're referring to a  
3 different period of time.

4 Q Was there a time when Mr. Bloom  
5 complained to you about the backlog of the  
6 exams at the Bronx court clinic?

7 A Yes. That sounds familiar.

8 Q And what do you remember about  
9 that?

10 A I remember talking with Dr. Jain  
11 about strategies to try to keep examinations  
12 going as best we could.

13 Q Was there a discrepancy as to  
14 whether or not defendants were being  
15 produced versus whether or not exams were  
16 being conducted all together?

17 A I'm not sure I understand the  
18 question.

19 Q Well, it was Mr. Bloom's  
20 contention that there was a work stoppage,  
21 right?

22 On the other hand, you had  
23 Dr. Jain and maybe Ms. Persaud saying that  
24 the defendants weren't being produced. Do  
25 you recall that there was kind of like

1 R. MACDONALD

2 conflicting accounts of what was transpiring  
3 at the Bronx court clinic?

4 MS. CANFIELD: Objection to  
5 form. You can answer.

6 A No.

7 Q Do you recall having received a  
8 complaint from Mr. Bloom regarding the  
9 impact that the stoppage was having on  
10 criminal defendants awaiting trial?

11 A I recall some communication from  
12 Mr. Bloom. I don't remember the specifics  
13 of what his concern was.

14 Q What steps were taken to address  
15 Mr. Bloom's concerns about the work  
16 stoppage?

17 MS. CANFIELD: Objection to  
18 form. You can answer.

19 A I can't remember if there was some  
20 formal response to Mr. Bloom at that time.  
21 But, obviously, the intent of CHS has been  
22 to do the evaluations timely from the  
23 beginning. That was the intent, as I said,  
24 of taking over the clinics. And so our  
25 intentions and goals would have been aligned



1 R. MACDONALD

2 with this, if that was his assertion.

3 Q Do you know who Peter Jones is?

4 A No.

5 Q Had you engaged any of the staff  
6 at Legal Aid regarding the backlog of exams?

7 A I have not, no.

8 Q I'm going to show you what's going  
9 to be marked as Plaintiff's Exhibit, this  
10 will be 23, if I recall correctly?

11 MS. CANFIELD: It's going to  
12 be 24.

13 MS. HAGAN: 24.

14 (Whereupon, Email (Kaye's 6th  
15 Prod\_557-559) was marked as  
16 Plaintiff's Exhibit 24 for  
17 identification as of this date.)

18 Q This is from Mr. Bloom's  
19 deposition. And it bears the Bate Stamp  
20 series K6 Production 557 through 559. WS  
21 12/09/2019 and. I'm going to share the  
22 screen with you.

23 I want to draw your attention, I  
24 guess, I don't know if you need to see the  
25 entire thing, but I want to draw your

1 R. MACDONALD

2 attention to the list of defendants down  
3 here. Right.

4 Now, this is an email from  
5 Mr. Bloom to, I guess Tina Lawongo  
6 (phonetic) and Peter Jones. Do you recall  
7 that?

8 Do you know who they are? That's  
9 the beginning one.

10 A I know who Tina Lawongo is. I'm  
11 not familiar with Peter Jones.

12 Q Who's Tina Lawongo?

13 A She's an attorney at the Legal Aid  
14 Society.

15 Q And in what capacity does she act,  
16 do you know?

17 A I don't know.

18 Q So at any point did it come to  
19 your attention that at least 40 cases were  
20 waiting to be seen in December of 2019 at  
21 the Bronx court clinic?

22 A I was aware of some delays. I  
23 don't know that that number -- I mean,  
24 there's a lot of complexity as to how their  
25 cases are scheduled and produced. So I'm

1 R. MACDONALD

2 not sure that I would attest to that number.

3 But, as I mentioned, we were working on

4 struggles with staffing at the clinic at

5 that time.

6 Q Well, Dr. Kaye was still there.

7 Why wasn't she allowed to see any 730 exams?

8 MS. CANFIELD: Objection to

9 form. You can answer.

10 A I don't know that to be the case.

11 Q Well, Dr. Kaye contends that she

12 was rubber roomed, in fact, during the

13 period of October -- really, October 2019

14 until she believes she was constructed and

15 discharged.

16 MS. CANFIELD: Objection to

17 form, but you can answer.

18 A What's the question?

19 Q Why was Dr. Kaye prohibited from

20 seeing defendants from October 2019 to

21 January 2020?

22 MS. CANFIELD: Objection to

23 form.

24 A I'm not aware that she was.

25 Q So you're contending that you were

1 R. MACDONALD

2 not aware that Dr. Kaye was not allowed to  
3 see criminal defendants at that point?

4 A Correct.

5 Q You were not aware about the 40  
6 defendants that had not been seen; is that  
7 your testimony today, too?

8 MS. CANFIELD: Objection to  
9 form. You can answer.

10 A I was aware about concerns about  
11 processing at the Bronx clinic. I'm just  
12 not attesting to that 40 was the correct  
13 number.

14 Q What was the number that you  
15 believed it to be?

16 A I believe there were some delays.  
17 It's a complex process to identify,  
18 quote/unquote, backlog and put a number on  
19 it.

20 Q I'm going to show you what's going  
21 to be marked as Plaintiff's Exhibit 25.

22 MS. HAGAN: And this produced  
23 in October, Ms. Canfield. And it  
24 bears the Bate Stamp series 1718  
25 through 1719.

1 R. MACDONALD  
2 (Whereupon, Email  
3 (NYC\_1718-1719) was marked as  
4 Plaintiff's Exhibit 25 for  
5 identification as of this date.)

6 Q I'm going to scroll down to the  
7 bottom. Right.

8 This is from Dr. Jain to you and  
9 Dr. Ford, and it's dated October 9, 2019.  
10 Right. And the subject is the Bronx court  
11 clinic. Right.

12 And Dr. Jain says, "Hi, everyone.  
13 Thank you again for discussing this  
14 yesterday. This is the summary of my  
15 interaction with Legal Aid attorney Lorraine  
16 McEvilley and Jeffrey Bloom in the Bronx.  
17 This is rather lengthy, but thought it best  
18 to send it to you because of the potential  
19 impact on our processing staff." Right.

20 At this point there's an incident  
21 with Dr. Jain, Dr. Brayton and  
22 Ms. McEvilley.

23 Do you remember this?

24 A Vaguely.

25 Q What do you remember?

1 R. MACDONALD

2 A It's coming back to me as I read  
3 this email.

4 MS. CANFIELD: Do you want to  
5 take the time to read the entire  
6 email?

7 THE WITNESS: Yes, please.

8 Q Now, in this email Dr. Jain  
9 alleges that there's a hostile environment  
10 at the Bronx court clinic; is that right?

11 A Yes.

12 Q Now, do you know who a Ben is, by  
13 any chance?

14 A I'm sorry?

15 Q Do you know -- he says, "After  
16 this and after briefly speaking with Ben, I  
17 decided to still sit in on the two  
18 examinations."

19 Who is Ben? Is he talking about  
20 Brayton or Ben? Who is Ben?

21 A I think Benjamin Farver (phonetic)  
22 who was at that time Dr. Jain's chief of  
23 staff.

24 Q Now, what do you recall about this  
25 incident, outside of just the fact that

1 R. MACDONALD

2 there were problem that Legal Aid expressed  
3 about having Dr. Jain sit on the  
4 examinations with Dr. Kaye and Dr. Brayton?

5 A I mean, it's somewhat anglomaniac  
6 (phonetic) of the challenges we were having  
7 in the Bronx.

8 Q Did you ever discuss this issue  
9 with Dr. Kaye and/or Dr. Brayton?

10 A No.

11 Q Now, at any point -- I'm going to  
12 ask you a question. As a physician and as  
13 an administrator for all these years,  
14 especially dealing with doctors, right, has  
15 there ever been a time where you determined  
16 that it's better for a doctor to be given  
17 the option of resignation in lieu of  
18 termination versus being terminated?

19 A Yes. At times.

20 Q Have you ever made the statement  
21 that oftentimes a physician is best to be  
22 given the opportunity to resign rather than  
23 some of the implications that come along  
24 with formal termination?

25 A I may have said something to that

1 R. MACDONALD

2 effect.

3 Q In making a statement to that  
4 effect, for a physician, what are the  
5 implications of being terminated versus  
6 resigning?

7 A Well, being terminated for  
8 problems related to your work as a physician  
9 is reportable to the Office of the  
10 Professions.

11 Q So if you're terminated, you have  
12 to report that to the Board, right? The  
13 Office of Professional Medical Conduct or  
14 something like that; is that what it's  
15 called?

16 A Yes.

17 Q What are the implications for your  
18 career if you report something like that?

19 A I don't know exactly, but I think  
20 it could be problematic for your future  
21 employment.

22 Q Now, Dr. Kaye contends that she  
23 felt compelled to resign, especially in  
24 January after the work stoppage for two  
25 months. She felt that she was being set up



1 R. MACDONALD

2 to be terminated. Would you agree or  
3 disagree?

4 MS. CANFIELD: Objection to  
5 form. You can answer.

6 A I would disagree that she was  
7 being set up to be terminated. I don't  
8 disagree that things were going poorly. And  
9 that there had been -- you know, as we've  
10 discussed all day today, there was a serious  
11 lack of trust, collaboration, team work,  
12 going on with our efforts to improve the  
13 work in the Bronx clinics. It was --

14 Q Would Dr. Kaye have been  
15 terminated had she not resigned?

16 A Not for anything that was pending  
17 at the time.

18 Q So are you saying that steps  
19 weren't being taken to manage Dr. Kaye out  
20 after she complained about various aspects  
21 of the transition that we discussed earlier  
22 today?

23 MS. CANFIELD: Objection to  
24 form. You can answer.

25 A You asked about me about that

1 R. MACDONALD

2 phrase used by Dr. Ford. I mean, I think  
3 that implicit in that is to give people the  
4 opportunity to be remediated or to be  
5 managed out if the challenges with their  
6 work performance can't be fixed.

7 Q Were you aware of any opportunity  
8 that Dr. Kaye was given to be remediated?

9 A I'm aware that Dr. Jain and  
10 Dr. Ford both spent time with Dr. Kaye  
11 working on some of the challenges that we've  
12 discussed here.

13 Q Was Dr. Kaye put on a performance  
14 improvement plan?

15 A Not to my knowledge, no.

16 Q Was Dr. Kaye given a formal  
17 remediation program?

18 A No.

19 Q So had Dr. Kaye continued to work,  
20 it's your position that she would not have  
21 been terminated?

22 A I can't know that she would have  
23 been terminated.

24 Q But it didn't look good for  
25 Dr. Kaye if she continued to work there;

1 R. MACDONALD

2 would that be accurate?

3 MS. CANFIELD: Objection to  
4 form.

5 A I don't know that I would say  
6 that. I mean, it was not going well. I  
7 think we could all agree.

8 Q How could you say it wasn't going  
9 well. I mean, she was doing the evaluations  
10 when she had the opportunity to do them.

11 Why wasn't she allowed to continue  
12 to work?

13 MS. CANFIELD: Objection to  
14 form. You can answer.

15 A I mean, I just have a different  
16 reading of it than that. She was resistant  
17 to so many different elements all the time  
18 of what we were trying to do, and she  
19 contributed to an environment that's  
20 portrayed in that email, where our staff,  
21 our supervisors feel persecuted for even  
22 wanting to sit in on an evaluation in a  
23 clinic where really our goal and intention  
24 for even coming in there after all these  
25 years of practicing exactly the way that it

1 R. MACDONALD

2 always practiced, was to try to make it  
3 better.

4 It was not even an environment  
5 where anyone wanted to be where we could  
6 retain somebody good to be there with her.  
7 So it wasn't going well.

8 Q I'm going to ask you, Doctor, did  
9 you ever have -- I mean, how is Dr. Kaye  
10 exactly resistant? What examples do you  
11 have?

12 MS. CANFIELD: Can you repeat  
13 the question. I didn't hear it.

14 Q What example do you have of  
15 Dr. Kaye being resistant?

16 A So, I mean, the litany of  
17 complaints that she lodged, which are easily  
18 rebuttal, again, in my opinion.

19 The misunderstanding of our  
20 intentions. The implication that we are  
21 trying to through malfeasance and  
22 unethically influence the results of the  
23 evaluations. When, in fact, we are a group  
24 of people who took over this clinic because  
25 we believe the work and we want to make it

1 R. MACDONALD

2 better, and we want to make it more  
3 efficient.

4 Now, are we perfect? No. And did  
5 HR do some things wrong, did they have the  
6 wrong supervisor on there for a period of  
7 time that they shouldn't have. Sure. But  
8 each one of those things is interpreted as a  
9 personal attack, they're interpreted as  
10 about here, they're interpreted as  
11 retaliation.

12 The change in the title is a great  
13 example. It is completely meaningless to  
14 one's work. The distinction between medical  
15 record, a director, it was not meant as a  
16 slight or a demotion. And yet everything is  
17 perceived in that way.

18 The ability to accommodate  
19 feedback, even within the course of this  
20 deposition, it's like, if you haven't been  
21 doing it for 20 years, then nobody can have  
22 a differing opinion.

23 All of these things made it  
24 challenging to do the basic goal of what we  
25 had set out to do; which is to streamline

1 R. MACDONALD

2 the process, to make it better, to address  
3 the efficiencies. To recruit and retain  
4 staff to do good work. That's what we were  
5 trying to do. And it was all challenged by  
6 her resistance to that very project. Which  
7 she didn't believe that we were motivated by  
8 good intentions, and she resisted at every  
9 step. And it made it not a good place to  
10 work.

11 Q Now, you're saying that she  
12 resisted you at every -- that she resisted  
13 you every time. And that her complaints  
14 made it not a good place to work, but  
15 Dr. Kaye wasn't the only person that raised  
16 concerns about the changes that were being  
17 made.

18 And we went over this earlier. I  
19 mentioned earlier that Dr. Winkler had  
20 raised the concern, right. But he wasn't  
21 treated the same way as Dr. Kaye. I raised  
22 questions about Dr. Collin raising concern.

23 Now, what happen to Dr. Collin.  
24 Does he still work at the actual court  
25 clinic? Does he still work in Bellevue,

1 R. MACDONALD

2 let's begin with?

3 A Yes. Dr. Collin never worked for  
4 CHS. He still works for Bellevue, as I  
5 understand.

6 Q But he was no longer in charge of  
7 any court clinic once Dr. Yang came on; am I  
8 right?

9 MS. CANFIELD: Objection to  
10 form. You can answer.

11 A Yes. As I mentioned, the project  
12 was to consolidate the clinics under CHS.  
13 Dr. Collin never worked for CHS.

14 Q Did Dr. Collin apply for Dr.  
15 Jain's position?

16 A I don't know.

17 Q Was he considered to be the,  
18 quote/unquote, Uber director?

19 A I don't know. He was not one of  
20 the people I interviewed for that position.

21 Q So there were other candidates  
22 that were interviewed besides Dr. Jain,  
23 right?

24 A Yes.

25 Q And Dr. Collin was not one of the

1 R. MACDONALD

2 people interviewed, right?

3 A Correct.

4 Q And do you know why that was?

5 A No.

6 MS. CANFIELD: Objection to  
7 form. You can answer.

8 Q Would you have considered him a  
9 good candidate to replace instead of  
10 Dr. Jain?

11 A I don't know enough about his  
12 background. And I would have had to  
13 interview him.

14 Q Now, you were pretty animated as  
15 you talked about the types of allegations  
16 that Dr. Kaye had with her board of  
17 correction complaint, amongst others.

18 Did it anger you that Dr. Kaye  
19 accused you and the other CHS management of  
20 malfeasance?

21 MS. CANFIELD: Objection to  
22 form. Mischaracterizing the  
23 witness's testimony, but you can  
24 answer.

25 A No. I don't harbor any personal



1 R. MACDONALD

2 anger. I think it's unfortunate that it  
3 worked out that way. Because she clearly  
4 misperceived our intentions. And to me  
5 that's -- that's unfortunate and sad. I  
6 don't feel angry towards her. Because I do  
7 believe that she thinks that she was being  
8 persecuted by us. It's just simply that  
9 that's not the reality of the situation.

10 Q Why couldn't her shift be restored  
11 back from 9:00 to 5:30?

12 A I don't know the answer to that.  
13 I wasn't involved in that discussion. And,  
14 ultimately, again, it was an HR issue about  
15 standardization.

16 Q Dr. Kaye alleges that she wasn't  
17 taken seriously because she was a woman,  
18 rather than the other males that complained.  
19 Do you agree or disagree?

20 A I disagree. My direct supervisor  
21 at CHS is a woman, and Dr. Ford who was  
22 charged with running this initiative for CHS  
23 is a woman. So I don't know how CHS -- you  
24 know, I can't speak to Bellevue for many  
25 years or anything else.

1 R. MACDONALD

2 But I know at CHS our leadership  
3 has the principles of equity at the  
4 forefront, and certainly gender equity is a  
5 huge part of that.

6 Q Now, you said that there were no  
7 efforts by CHS management to interfere with  
8 the administration of the 730 exams, right?

9 A Correct.

10 Q And at no point did City Hall or  
11 CHS ever have any interference or made any  
12 inquiries about any specific exams, right?

13 A No interference. I don't know if  
14 there were inquiries that might have come  
15 from City Hall. I can't control whether  
16 that happened, but I'm not aware of any.

17 Q Were you aware of Dr. Yang asking  
18 about specific defendants, by any chance?

19 A No.

20 Q I want to direct your attention to  
21 an exhibit. And I'm going to make sure I  
22 pull up the right one.

23 Before I get into it, what was  
24 your familiarity with MOCJ? What do you  
25 know about them?

1 R. MACDONALD

2 MS. CANFIELD: Objection to

3 form. You can answer.

4 A They are a mayoral agency, I  
5 guess, or office that looks at issues  
6 relevant to criminal justice as part of City  
7 Hall.

8 Q You said that they look at issues.  
9 Now, was -- how often did you engage MOCJ?

10 A Very rarely.

11 Q Who engaged MOCJ from your office?

12 A Probably Patsy's chief of staff or  
13 data analysis people would be engaging MOCJ,  
14 and sometimes Patsy would talk to their  
15 leadership.

16 Q Who was the chief of staff at that  
17 time?

18 A Ben Farver.

19 Q Was John Volpe ever her chief of  
20 staff?

21 A No.

22 Q Who's John Volpe?

23 A John Volpe never worked for CHS.

24 Q He worked for Department of  
25 Health, right?

1 R. MACDONALD

2 A I believe so, yes.

3 Q Did he work with you?

4 A I've met John in different  
5 capacities over time.

6 Q Now, did you report to Ms. Yang  
7 when you were at the Department of Mental  
8 Health and Hygiene?

9 A No.

10 Q Did you know her at that time?

11 A I knew of her. I don't think we  
12 had many interactions.

13 Q I'm going to show you what's  
14 marked as Plaintiff's Exhibit 26. Okay.  
15 Plaintiff's Exhibit 26 bears the Bate Stamp  
16 series K6 Production 3 and 4. And it's  
17 actually produced at -- this would have been  
18 Mr. Bloom's deposition. I'm going to share  
19 the screen with you now. And I'm going to  
20 draw your attention to the beginning of the  
21 email -- well, the email from the beginning.

22 (Whereupon, Email (Kaye's 6th  
23 Prod\_3-4) was marked as  
24 Plaintiff's Exhibit 26 for  
25 identification as of this date.)

1 R. MACDONALD

2 Now, this is an email from  
3 Mr. Bloom to Connie Montoya and Claudia --  
4 Peter Jones and Claudia Montoya, right. And  
5 I just want to draw your -- well, do you  
6 want to read it first before -- you're not  
7 on it, but do you want to read it first  
8 before we get into a discussion about it?

9 A Sure.

10 Q For purposes of the record, the  
11 email involves Miguel Figueroa and Marsik  
12 had a 730 exam and he refused to board the  
13 bus to Rikers an exam was scheduled for  
14 December 28, 2015. The court date was  
15 January 19th, right. And Mr. Bloom goes on  
16 to describe Mr. Figueroa's stature, he's 285  
17 pounds, he's 6-foot three and had been  
18 violently attacking officers.

19 Had you heard anything about  
20 Mr. Figueroa during the course of your  
21 employment?

22 A I'm generally aware of the name.

23 Q What do you --

24 MS. CANFIELD: Dr. MacDonald,  
25 did you finish reading the email?

1 R. MACDONALD

2 THE WITNESS: No. Sorry.

3 MS. CANFIELD: Why don't you  
4 finish reading the email.

5 Q Now, for purposes of clarity and  
6 the record, Mr. Bloom says, "Melissa has  
7 been receiving calls and emails from John  
8 Volpe and Trish Marsik of the Mayor's  
9 office, and Patsy Yang and Angela Solimo of  
10 Dot DOC.

11 Was it your understanding that  
12 Ms. Yang was working at DOC at that time?

13 A No.

14 Q "She told me that she received an  
15 email from John today, in which he  
16 encouraged Melissa to ask Judge Veijas for a  
17 force order to get Mr. Figueroa to the  
18 clinic."

19 Do you recall that?

20 A No.

21 Q At this point were you involved in  
22 this case or involved with Mr. Figueroa on  
23 any level?

24 A No.

25 Q So I'm going to ask you some more

1 R. MACDONALD

2 questions again, going back to the Board of  
3 Correction complaint.

4 Now, Dr. Kaye raises some issues  
5 about malfeasance and the interference with  
6 the examination. And one of the examples  
7 that she has cited was the Miguel Figueroa  
8 case.

9 Would you say that that was an  
10 instance of influence, undue influence?

11 MS. CANFIELD: Objection. You  
12 can answer.

13 A Not based on the evidence that's  
14 just been presented to me. And also those  
15 people are part of an entity external to  
16 CHS.

17 Q So you're saying that CHS, in  
18 2015, was not at the Department of Health?

19 MS. CANFIELD: Objection to  
20 form. You can answer.

21 A I'm sorry. What was the date of  
22 that exchange?

23 Q I can tell you. December -- let's  
24 get back to this. This particular email was  
25 December 16, 2015.

1 R. MACDONALD

2 A And the allegations -- so that was  
3 before CHS took over the forensic evaluation  
4 clinics, correct?

5 Q Well, Ms. Yang is asking about  
6 these particular exams regardless of whether  
7 or not they took over, quote/unquote. Ms.  
8 Yang is asking about this specific defendant  
9 and getting a forced order at that time.

10 A Was that clear from the email that  
11 you showed me?

12 Q I'm sure.

13 A Or was that a question from MOCJ?

14 Q No. We can review it.

15 A I mean, the information in the  
16 email in question as it described her as an  
17 employee of the Department of Correction.

18 Q Well, you said that she was at the  
19 mayor's office at that time.

20 A My point is, this doesn't  
21 establish that she was trying to influence  
22 the outcome of an evaluation.

23 Q Well, they wanted -- Melissa  
24 believes that the mayor's office anticipates  
25 a finding of unfitness. Right?



1 R. MACDONALD

2 A But what is that based on?

3 Q Well, "She told me that she  
4 received an email from John today in which  
5 she encouraged Melissa to ask Judge Viejas  
6 for a forced order to get Mr. Figueroa to  
7 the clinic.

8 How often would you say that  
9 someone would ask for a forced order for a  
10 defendant?

11 A You're showing me the email that  
12 is -- one person's impression from that time  
13 of what Dr. Kaye told them, based on her  
14 conversations with four different people.

15 Q Um-hmm.

16 A And you're asking me -- you're  
17 presenting this as evidence that Patricia  
18 Yang was influencing the outcome of  
19 evaluations. Is that correct?

20 Q Let's keep going. We're going to  
21 have another exhibit. We're going to have  
22 Exhibit 27. K6 Production 73 through 78.  
23 Right.

24 (Whereupon, Email (Kaye's 6th  
25 Prod\_73-78) was marked as

1 R. MACDONALD  
2 Plaintiff's Exhibit 27 for  
3 identification as of this date.)

4 MS. CANFIELD: Is this also  
5 part of the Bloom deposition?

6 MS. HAGAN: Yes.

7 MS. CANFIELD: Do you know  
8 what the exhibit number was for  
9 Bloom?

10 MS. HAGAN: I can't tell you  
11 that off the top of my head.

12 Q Now, the first email here is from  
13 Angela Solimo, and it's to Dr. Kaye, and the  
14 subject is MF for Miguel Figueroa. And she  
15 asks, "Dr. Kaye, are you expecting Miguel  
16 Figueroa, AKA Figueroa, whatever, in the  
17 Bronx court clinic tomorrow for 730 exam  
18 evaluation. If so, special transportation  
19 will need to be made. Please let me know  
20 when you can."

21 Do you know who Angela Solimo is?

22 A Yes.

23 Q Who is she?

24 A Angela Solimo works for CHS.

25 Q And you were working for CHS in

1 R. MACDONALD

2 2015; am I right?

3 A Correct.

4 Q And even though they weren't  
5 managing the court clinics, she's asking Dr.  
6 Kaye about Mr. Figueroa; am I right?

7 A Yes.

8 Q So now Dr. Kaye is responding to  
9 Ms. Solimo, "Hi, Angela. Yes. We called  
10 him in for tomorrow and have made DOC aware.  
11 Thank you." Right?

12 A Yes.

13 Q Then Ms. Solimo again reaches out  
14 to Dr. Kaye. "Thank you for the message  
15 this morning. This was communicated to  
16 mental health leadership and a unit chef in  
17 his facility."

18 Who's mental health leadership?

19 A I don't know who she would have  
20 been referring to at that time.

21 Q Then she says, "The biggest  
22 concern is his stability over rushing to  
23 complete the 730 to my knowledge. So if he  
24 refuses, no need to agitate him. I left a  
25 message with your office as well. Can best

1 R. MACDONALD

2 be reached," and she leaves her number,  
3 right?

4 A Yes.

5 Q Then Dr. Kaye responds to not only  
6 Ms. Solimo, but to John Volpe. Where is  
7 John Volpe working at this point?

8 A I don't know.

9 Q He's working over at the  
10 Department of Mental Health and Hygiene; am  
11 I right?

12 A Maybe. That's where I knew him to  
13 work --

14 Q Executive deputy commissioner  
15 office, Division of Mental Health, Mental  
16 Hygiene, New York City Department of Health  
17 and Mental Hygiene, right?

18 A There you go.

19 Q Yes. And who's executive deputy  
20 commissioner at that time?

21 A Probably --

22 Q Would that have been Ms. Yang?

23 A No.

24 Q It wasn't?

25 A It was not Ms. Yang. It was Gary

1 R. MACDONALD

2 Belkin.

3 Q Gary Belkin. You're saying that  
4 he is reporting to Gary Belkin and asking  
5 all these questions, not Dr. Yang?

6 A Correct.

7 Q "What is the process of getting  
8 the judge to issue a force order? What if  
9 we don't want to wait three times for  
10 refusal." You see that?

11 A Can you show me the email that he  
12 was responding to again.

13 Q "Thanks for the update. I was  
14 just getting ready to let you know that  
15 defendant Miguel Figueroa refused production  
16 today. I understand that he is typically  
17 uncooperative, so it may require a force  
18 order from the judge to get him to produce  
19 in the future. However, most judges are  
20 reluctant to issue force orders. This is  
21 from Dr. Kaye. And typically require that  
22 the defendant refuses three times before  
23 they will even consider it. We have  
24 schedule him for December 28th. His return  
25 to court date is January 19, 2016. Please

1 R. MACDONALD

2 let me know if there are plans to try to get  
3 a force order." Right?

4 A Yes.

5 Q And then John Volpe says, "But  
6 what if we don't want to wait three times."  
7 Right?

8 A Yes.

9 Q So then Ms. Solimo, "To my  
10 knowledge, that order can only come from the  
11 court as it requires a judge's signature.  
12 It's not something we typically get involved  
13 with from the jail side." Right?

14 A Yes.

15 Q Okay. "But who specifically  
16 requests the force order, what party?  
17 Please excuse any typos." Right?

18 A Yes.

19 Q And then Dr. Collin says, "Hi,  
20 John, going back a few emails, can you  
21 clarify the statement to the pronoun we,  
22 quote/unquote. What is the process of  
23 getting the judge to issue a force order?  
24 What if we don't want to wait three times  
25 refusal." Right?

1 R. MACDONALD

2 "And the judge orders the  
3 evaluation and directs its completion,  
4 including authorization for DOC to use  
5 reasonable force to produce defendant for  
6 his examination, as the judge deems  
7 appropriate. Whoever the we, quote/unquote,  
8 is should reach out to the defendant's  
9 attorney. I would imagine who can then  
10 petition the court if he thinks a force  
11 order to completion of the 730 is in the  
12 best interest of his client." Right?

13 And then Mr. Volpe responds, "The  
14 we is City Hall. They are tracking the  
15 case."

16 Now, you said earlier Dr. Yang was  
17 working out of the City Hall; am I right?

18 A At some point, yes. I don't know  
19 when she would have started at City Hall.  
20 But I would not describe all opinions  
21 ascribed to City Hall to Dr. Yang.

22 Q Now, I'm going to ask you some  
23 questions. You disagree with any number of  
24 aspects of Dr. Kaye's complaint to the Board  
25 of Corrections. What else would you say

1 R. MACDONALD

2 that you dispute of Dr. Kaye's complaint to  
3 the Board of Corrections?

4 MS. CANFIELD: I don't think  
5 he read the whole complaint at least  
6 today at the deposition.

7 MS. HAGAN: Why don't we do  
8 this. We don't we take a break,  
9 right. Why don't we give  
10 Dr. MacDonald the opportunity during  
11 that break to read the --

12 MS. CANFIELD: But I hope it's  
13 just five minutes because at this  
14 point --

15 MS. HAGAN: It's five minutes.

16 MS. CANFIELD: We're going to  
17 be finished at 6:10, based on the  
18 hour and the two five-minute breaks.  
19 That's fine. But before we do go,  
20 there are a number of exhibits that  
21 I do not have that I would like you  
22 to email me, if you could, Ms.  
23 Hagan.

24 MS. HAGAN: If you can email  
25 the ones you don't have or the ones



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2 that you're referencing, then I can  
3 do that.

4 MS. CANFIELD: I can say them  
5 on the record now, if you want to  
6 write it down because --

7 MS. HAGAN: I'm not going --  
8 just email me and then you can make  
9 sure it's accurate and then we won't  
10 have this problem for Monday.

11 Because it's not going to be  
12 the same as me doing it. If you  
13 email, it will just be a more  
14 efficient process.

15 MS. CANFIELD: Either that or  
16 you email them to the court  
17 reporter, and when the transcript's  
18 produced, which we are requesting a  
19 copy so Dr. MacDonald can review for  
20 accuracy. I'm not going to buy the  
21 transcript. If you can just provide  
22 it for the witness to certify.

23 MS. HAGAN: Well, up until now  
24 you have been asking for expedited  
25 transcripts so --

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2 MS. CANFIELD: I have not.

3 And we have been instructed not to  
4 do that. I'm going to ask for a  
5 certified copy so Dr. MacDonald can  
6 review it.

7 MS. HAGAN: I'm going to have  
8 to think about that one. Because  
9 that would incur more costs for  
10 Dr. Kaye. But what I can do is --

11 MS. CANFIELD: I don't think  
12 so. All you have to do is give me a  
13 copy. You should have a couple of  
14 copies that you've got.

15 MS. HAGAN: I can send you an  
16 electronic version of it.

17 MS. CANFIELD: As long it's  
18 certified by the court reporter.  
19 That's fine.

20 MS. HAGAN: Why don't we take  
21 the break. And then -- you have the  
22 Board of Correction complaint or do  
23 I need to sent it now?

24 MS. CANFIELD: You need to  
25 send that one, I don't have it.

1 R. MACDONALD

2 MS. HAGAN: I can send it to  
3 you. And you guys can review it  
4 during the break.

5 MS. CANFIELD: Yeah. Send it  
6 to me and I'll forward it to  
7 Dr. MacDonald.

8 MS. HAGAN: Okay. Fair  
9 enough.

10 (Whereupon, a recess was taken  
11 from 5:41 p.m. to 5:49 p.m.)

12 Q Now, I'm going to ask you -- I  
13 think you've had an opportunity to review  
14 the Board of Correction complaint now,  
15 right, Dr. MacDonald?

16 A Yeah. It's quite a long document.  
17 So, I mean, we can go through it point by  
18 point, if you'd like.

19 Q I don't know if that's necessary.  
20 I think that you -- it will probably be more  
21 constructive for you to explain your  
22 disagreement with the document.

23 MS. CANFIELD: Just note that  
24 he may not get everything if you  
25 don't question him, but his general

1 R. MACDONALD

2 impressions with the five minutes  
3 that he had to read it.

4 MS. HAGAN: Yeah. Sure.

5 Let's do that.

6 A So the section on dual agency  
7 prohibitions we discussed. That I agree  
8 with her assertions about the requirements,  
9 but she presents no evidence that we have  
10 wantonly violated dual agency prohibition,  
11 causing direct harm to defendants. Simply  
12 not the case, that we do respect those  
13 principles.

14 Q What about the destruction of work  
15 product?

16 A Well, she -- I thought you were  
17 going to have me go through it.

18 Q No, no, I can ask you some  
19 questions because that might make it easier  
20 and make it more specific.

21 A Well, there were several other  
22 things I'd like to comment on before we get  
23 to that.

24 MS. CANFIELD: Why don't you  
25 allow him to comment and then you

1 R. MACDONALD

2 can question.

3 MS. HAGAN: Sure.

4 A Okay. So we talked about the  
5 recording of forensic examinations. I  
6 explained my assessment of that situation.  
7 Whereas here there is a statement that CHS  
8 abhors transparency at CPL 730 examinations  
9 and has prohibited recording to conceal the  
10 poor quality and misconduct in exams.

11 Obviously, that's not the case.  
12 We, as I said, would be open to recording  
13 all exams, if we had a consensus among staff  
14 that that's the best practice. My personal  
15 take is that if it's the best practice for a  
16 case, it should be the best practice for all  
17 cases.

18 But certainly we just need to have  
19 a clarity on how that happens and a  
20 consensus among all the people who work  
21 together to do this work. Not that we abhor  
22 transparency. And that kind of manipulation  
23 of our intentions, when we have a reasonable  
24 disagreement, is exactly what I'm discussing  
25 that was the primary challenge of managing

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2 Dr. Kaye.

3 Q Would you agree --

4 A May I finish? That, in fact, when  
5 there's a reasonable disagreement -- and  
6 just an assertion, that the average person  
7 would use their judgment to discuss  
8 something like the occasional ad hoc  
9 recording of an evaluation with their  
10 supervisors and their colleagues, that then  
11 becomes perceived as an organizational  
12 desire to restrict or to act unethically --

13 Q But wasn't that the case --

14 A There's simply no evidence of that  
15 and there --

16 Q Wasn't there discipline in the  
17 wake of this disagreement?

18 A Again, the issue was the judgment  
19 about doing that without discussion. Not  
20 that CHS has a problem with recording, per  
21 se. That's the issue. And, yes, we ended  
22 up issuing a policy to be clear about that,  
23 because we can't have different examiners  
24 having different approaches. But to make  
25 the leap that that is all in the interest of

1 R. MACDONALD

2 us abhorring transparency is --

3 Q I have a question.

4 A There is no evidence of that.

5 Q Is there any standard practice in  
6 place now as to how to administer the 730  
7 examinations?

8 A May I continue to go through --

9 Q No. I'm asking you a question  
10 before we move on. Because we're on this  
11 topic.

12 Is there any standard document in  
13 place or standard protocol in place as to  
14 how 730 examinations should be administered  
15 across the clinics?

16 A So there is a supervisory  
17 structure that has also been resisted at  
18 every turn. There is intentions that we  
19 never even reached to really think deeply  
20 about how do we systemically evaluate  
21 quality in the evaluations --

22 Q But Dr. Kaye is long gone. Dr.  
23 Kaye is long gone now.

24 A May I finish answering the  
25 question?

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2 Q But I'm asking you -- I'm trying  
3 to make sure that my question is precise and  
4 clear. I'm not sure it was.

5 I'm asking you today, today, is  
6 there a standard protocol or standard  
7 operating procedure in place to administer  
8 730 examinations across all four clinics?

9 Dr. Kaye has not worked at the  
10 court clinics since January 2020. We are  
11 now in November of 2021. No one is  
12 resisting you any more.

13 Is there a standard protocol and  
14 procedure in place now?

15 A There's a whole suite of policies  
16 that govern the evaluations in the clinics.

17 Q Okay. Today, if I get evaluated  
18 at the Queens court clinic, right, I'm a  
19 defendant, I stab my exboyfriend here in  
20 Queens today. Next year I stab him in the  
21 Bronx, right. From today, is there a way  
22 that I'm going to get the same type of  
23 process from the Bronx and the Queens  
24 clinic?

25 A You may have different examiners,



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2 but the process, yes, should be the same.

3 Q So they're going to all adhere to  
4 the dusky standard; am I right?

5 MS. CANFIELD: Objection. You  
6 can answer.

7 A I'm not going to speak to the  
8 specifics of how they are going to do their  
9 evaluations.

10 Q What are their reports going to  
11 look like, Dr. MacDonald?

12 MS. CANFIELD: Objection to  
13 the question. You can answer if  
14 you're able.

15 A They are going to look like  
16 forensic evaluation reports.

17 Q What do forensic evaluation  
18 reports look like to you, Dr. MacDonald?

19 A They are a multipage document that  
20 has a set of findings and a set of  
21 determinations.

22 Q Now, to your understanding, has  
23 there been any, I guess, format or any kind  
24 of other structure that's been imposed upon  
25 all four clinics in order to get this

1 R. MACDONALD

2 standardized methodology in place?

3 MS. CANFIELD: Objection to  
4 form. You can answer if you're  
5 able.

6 A So there is some inherent  
7 standardization in the eyesight process that  
8 attempts to standardize how we document  
9 different things. There are interests of  
10 autonomy on the part of evaluators that also  
11 need to be considered.

12 So we are not there to  
13 standardize -- it is not a cookie cutter  
14 endeavor that can be completely standardized  
15 across the board. And that never has been  
16 my intention to imply that that's what we  
17 wanted out of it. But we want to  
18 thoughtfully, carefully, with the staff and  
19 with the experts, figure out, how do we do  
20 these things as consistently as possible, as  
21 objectively as possible. And as efficiently  
22 as possible across all the clinics. That's  
23 the goal of the --

24 Q Eyesight doesn't necessarily  
25 impact the actual content of the report.

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2 Doesn't eyesight just capture whether or not  
3 the report was actually done and is a  
4 repository for saving reports themselves?

5 A Of course CHS does not contend  
6 that we are going to advice the examiners on  
7 the content of the report. So, no, of  
8 course the program that we use to document  
9 the reports would not dictate the structure  
10 of the report.

11 So it may provide general topic so  
12 that we can standardize as much as possible.  
13 And part of the goal that we, frankly, are  
14 still struggling to reach after COVID and  
15 the struggles that we've spent the day  
16 discussing in this deposition, is a  
17 collaborative process to understand, what  
18 can we agree on fundamental elements of the  
19 reports that should be in every report, and  
20 how would they look.

21 Of course, they would remain to  
22 the discretion of the individual examiners.

23 Q But Dr. Kaye hasn't been there for  
24 over a year. And what's stopping you from  
25 getting this consensus as to what should be

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2 in the report, the structure of the report.

3 She's not there any more. Why don't you

4 have this consensus now?

5 MS. CANFIELD: Objection to

6 form.

7 A It's a continual quality

8 improvement process. So is it completely

9 done, no, it will never be done. And, as

10 you know, the last two years have been

11 fraught for many reasons for all elements of

12 our society. And the FPECC clinics have not

13 been spared from that.

14 So it's a lot of work to try to

15 get people in place, recruitment retention,

16 have the right people and support them.

17 That's the basic goal of what we've been

18 here.

19 May I continue going through this

20 document that you asked me to review?

21 Q I know that we're short on time.

22 So I'm going to try to -- since you got a

23 chance to read it, I'm going to try to ask

24 you some questions. And if you need to read

25 a section, then I'll let you read it. Is

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2 that fair?

3 A (No verbal response.)

4 Q Because here's a discussion about  
5 the destruction of work product. I had  
6 asked you earlier about Dr. Kaye's  
7 allegation that -- well, there's back and  
8 forth.

9 Dr. Jain accused Dr. Kaye of  
10 stealing his notes. And Dr. Kaye accused  
11 Dr. Jain of destroying his notes. Now this  
12 Board of Correction complaint alludes to  
13 that, under destruction of work product.

14 Did you get a chance to read this  
15 paragraph?

16 A I did.

17 Q Do you agree or disagree with  
18 that?

19 A I have no evidence of this. This  
20 is one element of this document that  
21 didn't -- has never come to my attention.  
22 And I do -- I don't know the answer to this  
23 relatively simple question. Which could be  
24 worked out. I guarantee that Dr. Jain,  
25 Dr. Ford, would be open to discussing what

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2 is the best practice and standardizing that  
3 practice across the clinics.

4 So I don't think that what's  
5 portrayed here is true, but I don't have  
6 specifics on what the current policy for  
7 this is.

8 Q Now, then you have the next one,  
9 the 730 team court liaisons, right? What is  
10 your familiarity with the 730 team?

11 A So the 730 team is really designed  
12 to provide continuity as people move back  
13 and forth between restoration of fitness,  
14 which happens in OMH state run facilities  
15 where they have treatment over objection, to  
16 returning to jail, where people often  
17 historically would decompensate. They lose  
18 the treatment over objection and the jail  
19 environment can be chaotic, and it's very  
20 different from the inpatient setting.

21 And so these teams were designed  
22 to follow those patients through the system  
23 so that they don't get lost, so they don't  
24 fall through the cracks. So the key  
25 elements of their care can be continued as

1 R. MACDONALD

2 they move through different settings.

3 Q Now, she alleges that, "The 730  
4 team and court liaisons comprise primarily  
5 social workers and mental health counselors  
6 who routinely make inquiries about  
7 defendant's legal case and discuss the  
8 defendant's details of their legal  
9 situation. Often giving unauthorized legal  
10 advise. They are also known to interject  
11 gratuitous opinions of competency, something  
12 from which they are neither qualified or  
13 tasked to do."

14 Now, do you agree or disagree with  
15 that?

16 A I disagree with that. I disagree  
17 with that. The program was designed by  
18 Dr. Ford to address specific needs for our  
19 patient population as they cycle between  
20 these care settings. It is not the  
21 intention of the program, nor is it the  
22 training of the staff of the program to do  
23 these things that she alleges.

24 Q Now, did the staff -- do you know  
25 for a fact that the staff did not engage in

1 R. MACDONALD

2 what Dr. Kaye alleged here in this  
3 paragraph?

4 A I have never heard of that, no.  
5 And I don't -- so since we're probably not  
6 going to have time to go through these,  
7 these allegations do not meet standards of  
8 evidence.

9 Q What standards of evidence are you  
10 basing it on?

11 A Okay. Let's go to --

12 Q By any chance, before you go --

13 A Let's go to quid pro quo hiring.

14 Q I have a question. Did you  
15 investigate any of these allegations once  
16 you saw this complaint?

17 A Yes. I discussed them all with  
18 the leadership of the FPECC clinics.

19 Q Did you go and speak to any of the  
20 730 team or delve an investigatory report in  
21 response to these allegations?

22 A No. There's no substance to this  
23 allegation. I have regular meetings with  
24 the people who actually run these teams.  
25 And I know what the intentions of these



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2 teams are, I know what the goals of these  
3 teams are. And this is essentially rumor  
4 and hearsay. And is put in a document as if  
5 she had material facts about this. But  
6 there is no material fact behind it.

7 Q Did the Department of  
8 Investigation ever approach you about  
9 Dr. Kaye's complaint?

10 A No.

11 Q Did the Board of Correction ever  
12 approach you about Dr. Kaye's complaint?

13 A I don't recall.

14 Q Did the IG office ever approach  
15 you about Dr. Kaye's complaint?

16 A I've spoken to at least one person  
17 in the District Attorney's Office.

18 Q Which District Attorney's Office?

19 A I don't recall.

20 Q What was the discussion about?

21 A The discussion was a brief one,  
22 where the district attorney was concerned  
23 about the things that were raised. But  
24 dubious about the way they were presented,  
25 and wanted my reassurance that this was

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2 related to a personnel issue, and that there  
3 was a person who was disgruntled with CHS,  
4 who had made these various allegations that  
5 are easily rebutted.

6 And that is what I told them and  
7 that continues to be my assessment, even  
8 though clearly we're not going to get a  
9 chance to go through the details.

10 Q So now, I'm going to ask you some  
11 questions about Nicholas Feliciano  
12 (phonetic).

13 Do you know anything about that  
14 case?

15 A Yes.

16 Q Okay. What do you know about  
17 Mr. Feliciano?

18 THE WITNESS: So I would just  
19 ask my counsel what I'm allowed to  
20 disclose, if it involves protected  
21 health information.

22 MS. CANFIELD: I would say  
23 that you cannot disclose that  
24 information.

25 MS. HAGAN: Well, it's not

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2 necessarily disclose, I mean it's  
3 public record. The Board of  
4 Correction complaint is out there.  
5 I have it here right now. We can  
6 discuss it from the document, if  
7 you'd like.

8 MS. CANFIELD: Why don't you  
9 just show what's in the document.  
10 Why don't you show the witness the  
11 document.

12 Q At any point did you respond to  
13 findings from the Board of Correction about  
14 Mr. Feliciano?

15 A Yes.

16 Q When did you make this response?

17 A Recently.

18 Q How recent?

19 A I don't recall. In the last few  
20 months.

21 Q Okay. The report was issued on  
22 October 18, 2021. And today is November 12.  
23 So would it be fair to say that you issued  
24 your response between today and October 18?

25 A Yes. Presumably.

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2 Q And do you recall that  
3 Mr. Feliciano basically attempted to hang  
4 himself, to kill himself in his cell?

5 MS. CANFIELD: Is this of  
6 public information? I don't know  
7 how this has to do with Dr. Kaye.  
8 It's not in her complaint. Is  
9 this --

10 MS. HAGAN: It does have to do  
11 with some of the allegations she  
12 raised, right.

13 MS. CANFIELD: Does she raise  
14 the allegations in the DOC  
15 complaint?

16 Q Now, here it highlights -- I guess  
17 there's a question of here right now, the  
18 Feliciano report highlights the problems  
19 with the MacDonald --

20 MS. CANFIELD: Wait, wait.  
21 Hold on. You haven't answered my  
22 question. I don't understand where  
23 you're going here.

24 MS. HAGAN: I'm telling you  
25 what it is. I said it highlights

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2 the problems with Dr. MacDonald and  
3 Dr. Ford's reckless disregard for  
4 doing thorough medical record  
5 reviews, the standard practice of  
6 requirement in all areas of  
7 medicine. That's what the report  
8 does bring up some of the findings.  
9 And I wanted to go and talk about  
10 some of the findings here.

11 MS. CANFIELD: Okay. But my  
12 questions is, is the report  
13 generated as a result of the  
14 complaint made by Dr. Kaye?

15 MS. HAGAN: We don't know. We  
16 don't know. And that's why we have  
17 questions about what the report  
18 deals with --

19 MS. CANFIELD: Can you pull  
20 up -- can you share the report as an  
21 exhibit because I do not have it.

22 MS. HAGAN: Well, we can go  
23 back to the Board of Corrections  
24 report.

25 MS. CANFIELD: Well, if you're

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2 going to use this in your case in  
3 chief, you have to exchange it with  
4 me, regardless of it's public  
5 knowledge. I don't have it.

6 MS. HAGAN: I can give it to  
7 you. I can produce it. It's not a  
8 problem.

9 MS. CANFIELD: Can you do that  
10 now, please.

11 MS. HAGAN: Well, I haven't  
12 even entered it because we're not  
13 talking about it right now. I'll do  
14 it after.

15 MS. CANFIELD: No. But it's  
16 discoverable. If you're planning to  
17 use it in your case in chief,  
18 regardless --

19 MS. HAGAN: I don't know yet.  
20 I would like to continue with the  
21 Board of Corrections complaint.

22 MS. CANFIELD: You still have  
23 to produce it.

24 MS. HAGAN: At some point,  
25 perhaps.

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2 MS. CANFIELD: Well, discovery  
3 is closed on the 19th. So you need  
4 to produce it.

5 MS. HAGAN: I understand.

6 Q Dr. MacDonald, right, you said you  
7 had some further issues with the Board of  
8 Correction complaint. Let's go through  
9 that.

10 A Sure. So misuse of CPL 730  
11 intent, CHS leadership expressed intent to  
12 take over 730 exams to get people off the  
13 island. This political agenda to use the  
14 CPL 730 exam is a means to empty Rikers  
15 Island has perverted the examination process  
16 and compromised validity of results and the  
17 integrity of legal proceedings.

18 This is, again, a misunderstanding  
19 of the basic fact that when these  
20 evaluations are done efficiently, that  
21 people spend less time in pretrial  
22 detention, which is bad for them. Stating  
23 that fact and having an organizational  
24 commitment to doing the evaluations  
25 efficiently does not pervert the content of

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2 the evaluations. It does not.

3 And it does reflect an  
4 organization that cares about the content  
5 and efficiency of the work. And that's why  
6 we took over these clinics. It has been  
7 challenging for us as individuals and as  
8 managers, but we believe in the work. And  
9 that's why undertook this endeavor, and  
10 that's why we're still pushing to make it as  
11 good as it can be.

12 So to say that that inherently is  
13 a conflict of interest reflects the  
14 resistance to the entire endeavor. And the  
15 conflation of a legitimate organizational  
16 desire to do things as efficiently as  
17 possible while preserving quality as  
18 malfeasance.

19 Q Dr. MacDonald, was there ever a  
20 time where there was a discrepancy between  
21 the numbers that the Bronx court clinic  
22 claimed to have been generating and what  
23 eyesight captured the clinic?

24 A I don't know specifically. I'm  
25 sure that there was. Because these are



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2 complex systems. And even to get a system  
3 that tracks carefully the number of  
4 evaluations outstanding is challenging.

5 When we came to some of the  
6 clinics, we had to get working phone lines  
7 into the clinics. So are a lot of things  
8 that might not go perfectly, even under a  
9 CHS administration, but that doesn't change  
10 the fact that our intent is to make the  
11 process work better.

12 Q So you're saying that these were  
13 hiccups in the system rather than an  
14 intentional effort to deceive; is that  
15 right?

16 A Absolutely. One hundred percent.  
17 And anyone who knows large systems such as  
18 these, knows that there will be hiccups.  
19 Knows that there will be errors in the HR  
20 system. And, yes, those errors, I wish they  
21 were fixed quicker, too. But when they're  
22 consistent perceived as attacks or  
23 malfeasance, then it's very hard to work in  
24 a collaborative way with a person who thinks  
25 that you are doing something wrong and

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2 targeting them, when you're not.

3 Q So what about the Queens pilot  
4 project, at some point Dr. Kaye alleges that  
5 there is a misrepresentation around the  
6 calculation of the turnaround time. That  
7 the numbers that were being told to City  
8 Hall into any various number of  
9 stakeholders, that they excluded cases on  
10 hold, and it showed that there was dramatic  
11 improvement, but they had excluded things  
12 that would typically extend the turnaround  
13 time for the Queens pilot project, but not  
14 other clinics.

15 Would you agree or disagree with  
16 that?

17 A I would say that that project was  
18 initiated and conceived before CHS took over  
19 the clinics. Our efforts were actually  
20 orthogonal to that project. I think that  
21 there's always areas for critique of how the  
22 data is measured and how the evaluation is  
23 done. That's the complexity of quality  
24 improvement efforts in general. And  
25 Dr. Kaye might have a different opinion

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2 than someone else.

3 It doesn't mean that Dr. Kaye is  
4 correct or that it is malfeasance to measure  
5 it the way it was measured. I think that  
6 that project was done in good faith.  
7 Although, as I pointed out, it was really  
8 done under the guidance MOCJ when that  
9 clinic was not part of CHS.

10 Q Now, Dr. Kaye says in bold print,  
11 "I have been prevented from doing my job  
12 because CHS has refused to staff the Bronx  
13 court clinic, rendering the service  
14 non-operational. This has caused scheduling  
15 problems and a backlog of cases. And strong  
16 disapproval from important stakeholders."

17 Now, what's your position on that?

18 A I think that's absolutely an  
19 oversimplification. And that our goal has  
20 been to staff, recruit and retain. And I  
21 think that today the Bronx clinic is doing  
22 pretty well.

23 Q So what does the Bronx clinic look  
24 like today? Who's the director of the Bronx  
25 clinic right now?

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2 A Dr. Weiss.

3 Q And Dr. Weiss is a male, right?

4 A Yes.

5 Q And Dr. Weiss doesn't have any  
6 child care issues; am I right?

7 A I have no idea.

8 Q And does Dr. Weiss have a  
9 co-evaluator?

10 A I don't have the staffing of the  
11 Bronx clinic at my fingertips. But I know  
12 that their cases have been handled  
13 efficiently in the last few weeks, based on  
14 the data that I've seen most recently.

15 Q So you're not sure if there is  
16 another full-time evaluator at the Bronx  
17 court clinic today?

18 A There is.

19 Q There is one?

20 A I don't know whether it's  
21 full-time or part-time. I know that there  
22 is staffing in the Bronx to adequately keep  
23 up with the evaluations that are coming in.

24 Q Now, Dr. Kaye alleges that that  
25 wasn't the case when she was there.

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2 Would you agree or disagree with  
3 that?

4 A I acknowledge that we struggled  
5 with staffing retention, recruitment in that  
6 the clinic. And that there was a period of  
7 time where we were understaffed and that  
8 impacted the evaluations being done.

9 Q Are you attributing the staffing  
10 and recruitment issues to Dr. Kaye solely?

11 A No. I think they are very complex  
12 issues that we take a holistic approach to.  
13 So I would not ascribe them solely to Dr.  
14 Kaye. Nor would ascribe them solely to the  
15 managers in charge of hiring and filling  
16 those positions.

17 Q Now, did the Bronx court clinic  
18 operations improve after Legal Aid Society  
19 complained about backlog at the clinic?

20 A Again, I explained that our  
21 intentions at CHS would be aligned with  
22 theirs. We have been trying our best to do  
23 the evaluations efficiently and effectively.

24 Again, that's the project at hand.  
25 So the complaint probably was received at a

1 R. MACDONALD

2 low point and things improved after that,  
3 yes.

4 Q How would you describe CHS's  
5 relationship with Legal Aid Society?

6 A I've always had a respectful  
7 relationship with Legal Aid Society. I  
8 think we see them as our partners and the  
9 important work that we're doing. It's  
10 cordial.

11 Q Now, the efforts to make the exams  
12 more efficient, how did that impact the  
13 integrity of the exams?

14 A It didn't. It really focused on  
15 scheduling, on process, on things like  
16 telephones in the clinics, as I mentioned.  
17 On clear channels of communication. It even  
18 focused on things that didn't work out the  
19 way we might have hoped. Like the redaction  
20 question. If we could have streamlined that  
21 process more, we would have.

22 So we were looking at any elements  
23 of reducing administrative burdens to the  
24 evaluations being done. Another thing would  
25 be productivity of individual examiners and

1 R. MACDONALD

2 scheduling as many cases as possible to be  
3 done during the week.

4 Q Does Dr. Owen still work at the  
5 Queens court clinic?

6 A No.

7 Q What happened to Dr. Owen?

8 A Dr. Owen has recently resigned.

9 Q Did she resign in lieu of  
10 termination?

11 A She was not being faced with  
12 termination at that time.

13 Q The question is, was termination  
14 contemplated as it came to Dr. Owen?

15 A There was an issue that was raised  
16 that had not yet been fully investigated.

17 Q What was the issue?

18 A There was an issue related to the  
19 independence of her evaluations, where some  
20 of the language seemed to be similar to that  
21 uses in a co-examiner's evaluation.

22 Q The independence, what do you  
23 mean? Are you saying that she plagiarized?

24 A It's not clear exactly what  
25 happened. She had an explanation for it,

1 R. MACDONALD

2 which wasn't fully investigated before she  
3 left.

4 Q So someone raised concerns about  
5 the report. Who raised concerns about  
6 Dr. Owen's report?

7 A I think it was her co -- I don't  
8 want to misspeak. I don't remember exactly.

9 Q Who was her co-examiner?

10 A I don't recall.

11 Q Does the co-examiner still work  
12 there?

13 A Yes.

14 Q So Dr. Owen no longer works there.  
15 Has she been replaced?

16 A I don't believe so, no.

17 Q So the Queens center does not have  
18 a director; am I right?

19 A Currently, it does not.

20 Q Now, I just have a few more  
21 questions then I'm finished.

22 How does the 730 -- what is the  
23 funding source for the 730 mobile team?

24 A City tax levy.

25 Q A hundred percent city tax levy?



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2 A Unless I am mistaken, yes.

3 Q Has there ever been a time that  
4 the 730 team concealed medical  
5 documentation?

6 A Not that I'm aware of, no.

7 Q Does CHS bill Medicaid for the 730  
8 team's activity?

9 A No.

10 MS. HAGAN: I think that's it  
11 for me, unless I have questions upon  
12 redirect.

13 Does counsel have any  
14 additional questions?

15 MS. CANFIELD: I just wanted  
16 to invite the witness to, if there  
17 is anything regarding the Board of  
18 Corrections complaint that he did  
19 not testify to, that was inaccurate  
20 in her complaint, he's free to do so  
21 now.

22 THE WITNESS: Yeah. So we  
23 talked about the section on misuse  
24 of CPL intent, which was false.  
25 There's a section on quid pro quo

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2 hiring that alleges that FPECC  
3 evaluators engaged in quid pro quo  
4 agreement to cut corners and do a  
5 less thorough job in order to get  
6 people off the island. This is not  
7 true.

8 Again, the independence and  
9 integrity of the evaluations are  
10 core to our mission. And we are  
11 simply trying to increase efficiency  
12 by removing administrative areas  
13 wherever we can. As you --

14 MS. CANFIELD: No, no, no.  
15 It's my turn. No, no, it's my turn.  
16 No, no, no.

17 MS. HAGAN: But you haven't  
18 asked any questions.

19 MS. CANFIELD: No. I know.

20 MS. HAGAN: I'll let him  
21 finish and I'll ask my questions.

22 MS. CANFIELD: That's fine.  
23 Thank you.

24 MS. HAGAN: Keep going.

25 THE WITNESS: She alleges that

1 R. MACDONALD

2 this specifically, this quid pro quo  
3 agreement that she alleges exists,  
4 which does not exist, and presents  
5 no evidence of, has caused furious  
6 unfit findings. And she uses an  
7 example of, a hearsay example of an  
8 anti social sex offender, there's no  
9 evidence presented here that this  
10 exists. I guarantee that it does  
11 not exist. And then she's making a  
12 causal inference about the findings  
13 of the clinic based on this  
14 allegation.

15 Statutory violations, this is  
16 a mischaracterization of the ability  
17 to render reports with incomplete  
18 information, as long as the  
19 incompleteness of the information is  
20 clearly identified and delineated,  
21 and the limitations of the reports  
22 are available to the judge.

23 So there was a consistent  
24 conflict over that concept, where  
25 CHS asserts that this can be done,

1 R. MACDONALD

2 and this part of accepted practice.

3 And Dr. Kaye was not receptive to

4 that.

5 MS. CANFIELD: What about

6 inadequate forensic evaluators?

7 THE WITNESS: Inadequate

8 forensic evaluators. I would argue

9 a mischaracterization of the

10 oversight and supervision that we

11 were trying to bring to bear on

12 these clinics. Something that the

13 clinics had struggled with for

14 years.

15 And often times involvement of

16 managerial staff or supervisory

17 staff to try to help with

18 development is, again, perceived as

19 some kind of outside intervention

20 that is, at its core, trying to

21 influence the results of

22 examinations.

23 CHS has no intention of

24 influencing the results of the

25 examinations. So when we have more

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2 junior staff members working with  
3 supervisors, that's perceived as  
4 undue influence. And it's not.  
5 It's just trying to help people  
6 adjust. It's a key part, as I  
7 mentioned, of retention and  
8 recruitment. And it was really a  
9 struggle in the Bronx.

10 MS. CANFIELD: Anything else?

11 THE WITNESS: Forensic  
12 psychiatry practice deviations.  
13 Again, the sheer emphasis on doing  
14 the work efficiently and effectively  
15 does not mean that we were asking  
16 anyone to cut corners. We were  
17 simply acknowledging that there are  
18 implications and reason that the  
19 evaluations should both be done well  
20 and be done efficiently.

21 This second part about  
22 endorsing foregoing face-to-face  
23 evaluations is another  
24 misinterpretation of the same  
25 reasonable difference of opinion

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2 that I talked about. Where the  
3 limitations can be described in a  
4 report, as long as they are clearly  
5 delineated what the limitations are.  
6 Including when face-to-face  
7 evaluations can't be done. And the  
8 court can make appropriate  
9 determinations about how they use  
10 that information.

11 The order to conversate,  
12 again, is taking something that is  
13 meant to improve the process and  
14 ascribing to it. This malignant  
15 intent. So literally the order  
16 conversate is to make it as easy as  
17 possible when the examiners feel  
18 that it's useful or when there are  
19 barriers to coming to a conclusion,  
20 that the treatment team who know the  
21 patients can provide information to  
22 the examiners.

23 That is not the examiner  
24 substituting -- that is not the  
25 treating clinician substituting

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2 their interpretation for the  
3 examiner. That is simply another  
4 way to provide more collateral  
5 information. Just as the redaction  
6 became such a narrowly concrete  
7 problem, this is in the other  
8 direction, trying to get examiners  
9 sources of information that they may  
10 not readily have had access to  
11 before. And, again, it's looked at  
12 as malfeasance instead of trying to  
13 improve the process.

14 Destruction of work product,  
15 we talked about. I don't have much  
16 to say about that. Access to the  
17 impatient unit, there are certainly  
18 cares where this is beneficial and  
19 it is not a violation of dual roles,  
20 nor is it inherently prohibited  
21 through HIPPA. The 730 team, we  
22 talked about.

23 The HIPPA and legal privilege  
24 violations, I mean, I really don't  
25 have much to say about this

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2 particular section. I do know that  
3 the exact documentation and forms is  
4 a constant area of struggle and  
5 people don't always agree about  
6 exactly how the form should be  
7 filled out, about exactly which  
8 forms are necessary for different  
9 things.

10 Again, Dr. Kaye takes  
11 exception to some of the legal  
12 conclusions that H&H's legal  
13 department has made. And so, again,  
14 not malfeasance, in my opinion, but  
15 maybe areas where things weren't  
16 done perfectly, areas for  
17 improvement and we're always happy  
18 to look into those and to try to  
19 continue to get better.

20 And nowhere would assert that  
21 CHS has done a perfect job. Only  
22 that our intentions were to improve  
23 this process and we will continue to  
24 work towards that.

25 She doesn't like our medical



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2 documentation. Always an area for  
3 improvement in any healthcare  
4 delivery system.

5 Funding misallocation. She's  
6 asserting that Bellevue has been  
7 unable to run at full capacity due  
8 to insufficient funding, and somehow  
9 that CHS is implicated in taking  
10 funding away from Bellevue. This is  
11 just not correct in any sense of how  
12 these entities are funded. It's  
13 really just wrong.

14 CHS does not try to avoid  
15 hospital runs to save money. And  
16 there is no mechanism by which CHS  
17 saves money by avoiding hospital  
18 runs. It's just not correct.

19 Manipulation of statistics.  
20 Again, I assert that that project,  
21 which was not even initiated by CHS,  
22 which was started before the  
23 transition, was done in good faith,  
24 as far as I know. There could be  
25 reasonable discussion about what are

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2 the best metrics to define and how  
3 should they be measured. That's  
4 part of the process of quality  
5 improvement.

6 But, again, this document  
7 turns those legitimate discussions  
8 into an assumption that one side is  
9 trying to commit fraud, basically.  
10 There's no evidence for it, and it  
11 makes it very hard to work  
12 collaboratively.

13 Retaliation. Again, I don't  
14 believe that anyone was retaliating  
15 again Dr. Kaye. And that even the  
16 most minor changes and errors in  
17 management were perceived as  
18 personal assaults. And, again, I  
19 don't harbor any ill will. I just  
20 feel sad that everything was  
21 perceived in this way, because it's  
22 really not our intention.

23 And we talked about the  
24 challenges with staffing in the  
25 Bronx, which we acknowledge, but

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2 they are complex. And I would  
3 advert that they are better today  
4 than they were then.

5 MS. CANFIELD: Thank you. If  
6 you're finished. Dr. MacDonald, if  
7 you're finished, I'm finished.

8 BY MS. HAGAN:

9 Q I have some followup questions,  
10 Dr. MacDonald.

11 A Sure.

12 Q Now, you characterized the minor  
13 issues that Dr. Kaye had in the wake of her  
14 complaint is minor. Dr. Kaye, the shift  
15 change impacted her ability to provide child  
16 care for her children, that wasn't minor to  
17 her.

18 Why do you believe that the change  
19 in her shift was minor?

20 MS. CANFIELD: Objection to  
21 form. You can answer.

22 A I don't believe I specifically  
23 stated that that was minor. I have been --  
24 managed many staff over many years who are  
25 distressed by the shifts that they have to

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2 work or that are available to them. It can  
3 often be impactful to people's lives. So I  
4 don't mean to discount it.

5 Q Well, Dr. Kaye worked this shift  
6 for 19 years prior to -- or 18 years prior  
7 to you and Ms. Yang and Dr. Ford coming on  
8 board.

9 With the shift change, did it  
10 affect or did it improve the output of the  
11 reports in the Bronx once she had to go the  
12 new shift that you guys put in place?

13 MS. CANFIELD: Objection to  
14 form. You can answer.

15 A I'm not going to draw a direct  
16 link between those two things. But, you  
17 know, when the employer transitions, when  
18 the parent organization transitions, when  
19 the effort is around standardization and  
20 streamlining of work flows, of course there  
21 are going to be things that managers assert  
22 that staff don't like. And it's not to  
23 discount that those things are important.  
24 And we would never do that.

25 Q Dr. MacDonald, but you can't

1 R. MACDONALD

2 testify today that the other center  
3 directors had the exact same hours as  
4 Dr. Kaye, can you?

5 A Again, I think that was because  
6 they were in different positions which were  
7 not union positions. It tends to be union  
8 positions that have these -- and, again, I  
9 was not involved in that particular element.  
10 But it tends to be union restrictions that  
11 have these standardized restrictions on work  
12 hours.

13 Q Dr. Kaye was in this union  
14 position for 20 years. And all of a sudden,  
15 when you all came on to be her managers, now  
16 why you feel the need to impose these union  
17 restrictions on Dr. Kaye and no one else; is  
18 that right?

19 MS. CANFIELD: Objection to  
20 form. You can answer.

21 A Yeah. I mean, the frame work that  
22 I've laid out is that the clinics were  
23 managed in a haphazard fashion by multiple  
24 different entities over many years. And,  
25 yes, when CHS came in to standardize things,

1 R. MACDONALD

2 there were things that people didn't like.

3 Q Did the collective bargaining  
4 agreement dictate specific hours or did it  
5 dictate how many hours?

6 A Again, I was not involved in the  
7 details of that as our HR leadership was,  
8 and I don't know the specifics.

9 Q Then Dr. Kaye also complained  
10 about her pay being docked for several weeks  
11 in a row, and also that basically it was  
12 docked, not just several weeks in a row, but  
13 that she was unfairly penalized when she was  
14 entitled to retention bonus.

15 Do you recall that?

16 MS. CANFIELD: Objection. You  
17 can answer.

18 A Again, I think we've talked  
19 through that. I was not as involved as  
20 others in that.

21 Q Well, Dr. Kaye got \$13,600 versus  
22 the \$20,000 she was entitled to. Is that  
23 minor to you?

24 MS. CANFIELD: Objection to  
25 form. She actually was paid the

1 R. MACDONALD

2 full amount so you can answer.

3 MS. HAGAN: Initially she  
4 wasn't.

5 MS. CANFIELD: Again, the  
6 State's -- you can answer.

7 A I'm not minimizing Dr. Kaye's  
8 individual concerns. I'm just saying that  
9 they were consistently slotted into a frame  
10 of perception where she was being  
11 individually persecuted by an organization  
12 whose intentions were malfeasance. And that  
13 was not the reality of the situation by any  
14 stretch of the imagination.

15 Q And then what about the staffing  
16 issues, that wasn't personal either, right,  
17 Dr. MacDonald? It was complicated. That's  
18 what you said.

19 A The staffing issues, the issues of  
20 recruitment and retention for these  
21 position, yes.

22 Q Yes. That was complicated. And  
23 then --

24 MS. CANFIELD: Objection to  
25 form. You can answer.

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2 Q Now, you said that her allegations  
3 regarding the funding are the malfeasance  
4 regarding the funding. I'm just going to  
5 ask you something.

6 How is CHS funded?

7 MS. CANFIELD: Objection to  
8 form. You can answer.

9 A Through city tax levy.

10 Q All city tax levy?

11 A Not entirely, but the bulk of CHS  
12 is funded that way.

13 Q What's the remainder of the  
14 funding?

15 A There's some grants and other  
16 moneys that I don't totally understand.

17 Q The Gotham Corporation, what's  
18 that?

19 A That's a unit of Health and  
20 Hospitals unrelated to CHS.

21 Q So The Gotham Corporation doesn't  
22 fund CHS?

23 A The Gotham Corporation?

24 Q Um-hmm.

25 A I've never heard of The Gotham



1 R. MACDONALD

2 Corporation.

3 Q Does CHS receive any funding from  
4 Strive?

5 A From Strive?

6 Q Thrive.

7 A Thrive. So Thrive was, to my  
8 understanding, a mayoral program that  
9 earmarked certain city tax levy funding to  
10 be under the purview of that program, and  
11 some of the funding for a small number of  
12 CHS programs were under that umbrella. But  
13 it's a small percentage of CHS's total work.

14 Q What's the percentage?

15 A I don't know the percentage.

16 Q And the court clinics, what's the  
17 funding source of the court clinics?

18 A City tax levy.

19 Q All of it?

20 A Unless there's a small grant here  
21 and there that I'm not aware of, or some  
22 money that flows through the state, I  
23 believe so.

24 Q And what was the court clinics  
25 budget?

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2 A I don't know the total budget for  
3 the court clinics.

4 Q What is CHS's total budget?

5 A I don't know the exact number.  
6 It's somewhere in excess of 200 million  
7 annually.

8 Q Now, you also talked about the  
9 staffing issues. Dr. Kaye said that she was  
10 either understaffed or provided with an Ep  
11 (phonetic) staff.

12 Dr. Brayton went up to the court  
13 clinic eventually in December of 2018. Is  
14 it your testimony that Dr. Brayton was  
15 qualified to do the work of the court  
16 clinic?

17 A Yes.

18 MS. CANFIELD: Objection to  
19 form. You can answer.

20 Q You said yes, right?

21 A Yes.

22 Q How do you make that determination  
23 that she was qualified?

24 A Based on the assessments of my  
25 supervisors.

1 R. MACDONALD

2 Q At any point was Dr. Brayton  
3 remediated?

4 A I don't know that she was  
5 remediated.

6 Q At any point was Dr. Brayton's  
7 training period extended?

8 A I don't know the details of  
9 whether her training period was extended. I  
10 mean, obviously new staff have additional  
11 interaction with supervisors, to try to get  
12 them comfortable in their roles, to give  
13 them the support that they need.

14 Q Dr. Kaye raised questions about  
15 instances where evaluators are being  
16 expected to do examinations on the record  
17 without seeing the defendants. Do you  
18 recall any discussions to that effect?

19 A Yes. As I discussed, I think  
20 that's a mischaracterization of discussion  
21 whereby evaluations, reports can be written  
22 that demonstrate and elaborate the  
23 limitations of sources of information that  
24 were available to the examiner, that can  
25 still be useful to the courts.

1 R. MACDONALD

2 Q Now, at some point you just said  
3 that Dr. Brayton -- that your superiors  
4 evaluated Dr. Brayton and made an assessment  
5 that she was qualified. Who exactly made  
6 that assessment?

7 A I said my supervisors. So they  
8 would primarily be -- I mean, supervisors  
9 who worked for me, primarily Dr. Jain.

10 Q And you took Dr. Jain's word that  
11 Dr. Brayton was qualified over Dr. Kaye, who  
12 may have had issues with her work, right?

13 A Yes.

14 Q Why is that?

15 A Because Dr. Jain was the  
16 supervisor of the clinics, and I had worked  
17 with him and known his background, his  
18 training, and understood his judgment about  
19 the work that was being done in those  
20 clinics. I did not have the same faith in  
21 Dr. Kaye's judgment about her assessments of  
22 her colleague or the general assessments  
23 about what was the going on in the clinic,  
24 for the reasons we've discussed.

25 Q Now, I have a question about the

1 R. MACDONALD

2 complaints. Did you hear any complaints  
3 regarding Dr. Brayton's work from anyone  
4 outside of CHS?

5 A No.

6 Q So you never knew that Legal Aid  
7 or some of the judges expressed concern  
8 about Dr. Brayton's work?

9 A I know that Mr. Bloom in the Bronx  
10 often shared many of the same concerns that  
11 Dr. Kaye was raising. I was not aware of  
12 others who had raised concerns.

13 MS. HAGAN: Okay. That's it  
14 for me.

15 Do you have any other  
16 questions, Ms. Canfield?

17 MS. CANFIELD: I do not.

18 MS. HAGAN: Thank you for your  
19 time, Dr. MacDonald.

20 MS. CANFIELD: Thank you very  
21 much. I apologize for the time.

22 THE WITNESS: Thank you. Take  
23 care.

24 MS. CANFIELD: And if we can  
25 have a copy of those exhibits.

1 R. MACDONALD

2 MS. HAGAN: I saw the email  
3 that you sent.

4 MS. CANFIELD: Okay. And if I  
5 can have a copy of the deposition  
6 transcripts for the witness to  
7 review, and to complete an errata  
8 sheet on it.

9 MS. HAGAN: I will give it to  
10 you once I get them. Is that fair?

11 MS. CANFIELD: I need it for  
12 summary judgment, but, yes.

13 MS. HAGAN: Well, as soon as I  
14 get them, you'll get them.

15 MS. CANFIELD: Thank you.

16 MS. HAGAN: Thank you.

17 (Whereupon, this examination was  
18 concluded at 6:40 p.m.)

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1 R. MACDONALD

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5 \_\_\_\_\_

6 ROSS MACDONALD

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8

9 Subscribed and sworn to  
10 before me on this \_\_\_\_ day  
11 of \_\_\_\_\_, \_\_\_\_\_.

12

13 \_\_\_\_\_  
14 Notary Public

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WITNESS: ROSS MACDONALD

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MS. HAGAN

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C E R T I F I C A T E

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I, KIARA MILLER,

5

A Shorthand Reporter and Notary Public of the

6

State of New York, do hereby certify:

7

8

That the witness whose examination is

9

hereinbefore set forth, was duly sworn or

10

affirmed by me, and the foregoing transcript is

11

a true record of the testimony given by such

12

witness.

13

14

I further certify that I am not related to any

15

of the parties to this action by blood or

16

marriage, and that I am in no way interested in

17

the outcome of this matter.

18

19

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KIARA MILLER

22

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25